pump him about the case, and I know they would
588 not. There wouldn't be any objection to letting them go look at the office.

Mr. Galassi: At the time Mr. Foley's disposition was taken in June I asked at that time if, after the deposition was over with, I could go down and inspect the files, not go through anything in them but just see the setup, and Mr. Jaureguy said that would have to be taken up in court, and that is why we have put this matter in the form of a motion to inspect or, in the alternative, for subpoenas duces tecum.

Mr. Jaureguy: I would like to explain that, your Honor. I suppose maybe we all have our peculiarities and maybe that is a peculiarity of mine, but I am unalterably opposed, when I have a client whose deposition is being taken, to have the opposing party, while so taking the deposition, ask if he will permit them to do things, which I think ought to be taken up with the attorney. That is my feeling in the matter. Whether I am right or wrong, I don't know, but that is my feeling in the matter, and I made it clear to him at the time that I did not care to have him asking Mr. Foley whether Mr. Foley objected to him doing things. Mr. Foley is the executive secretary of two of the defendants in this case.

Anyway, it was not a case of going over there and just taking a look at what the office looked like. It was a matter of going over and going through the files, and that is what I am opposing now.

589 Mr. Galassi: I dispute that, because, just before I asked Mr. Foley that question on the taking of the deposition, I had had read into the record a part of the previous pre-trial proceedings in which your Honor was discussing the matter with Mr. Marcus and, as I recall, asked Mr. Marcus, "Why don't you go down and take a look at the files, the physical setup, so you would then be in a position to know how to ask more specifically for all of the documentary material you want?"

My purpose in asking the question at the taking of the deposition was not to go through the material, but simply to get an idea of the physical set up of the office so, if it was observed that there were so many filing cabinets labeled in such-and-such a way and so many boxes or whatever it was, we would then be in a position to know how, more definitely, to ask for the material we wanted.

Mr. Jaureguy: I do not care to enter into any argument as to what is in the deposition, because it has been transcribed.

The Court: What are these things?

Mr. Cohen: These are records.

The Court: Over there, I mean.

Mr. Galassi: Those are records and documents which were brought in this week, pursuant to the subpoenas duces tecum.

The Court: How did you happen to bring them up here this morning? Is something to be done about them here this morning?

Mr. Galassi: Well, your Honor, I thought something further was going to be said on that problem.

590 Of course, your Honor said the other day that Mr. Jaureguy should put his remarks in the form of a written motion with respect to the inspection of our photostats. That is what Mr. Cohen is going to discuss this morning. There is apparently quite a problem in sorting out the photostats, if your Honor is disposed to accede to Mr. Jaureguy's motion. Were you prepared?

Mr. Jaureguy: No, I did not prepare a motion. I did not understand I was directed to. I understood I had the option to file it or not, as I like.

The Court: That is right.

Mr. Galassi: We are through with the great proportion of the originals that were brought in. As far as the plaintiff is concerned, they are ready now to go back to the people or the organizations that were subpoenaed. Mr. Cohen has a list of them.

The Court: That is what you were expecting to do, send them back to them?

Mr. Galassi: Well, I am not acquainted with just how they were going back, whether we were to send them back or whether the Court would, through the Clerk, send them back or just how this was to be done. We will take care of that, but I understood Mr. Jaureguy was not through looking at a number of them.

I do want, first, to offer Mr. Marcus' apology for not being present this morning, but he had to go back to

591 Washington and he will be back here approximately the first of October.

If I may, I would like to make a few remarks in answer to Mr. Jaureguy on the inspection of Mr. Foley's files. As we pointed out in our memorandum in support of our motion, it is our position that the deplorable state of Mr. Foley's files, whatever it may be, is no excuse for not bringing in what is called for in the subpoena duces tecum. It might be an excuse for bringing in more material than is

asked for, some of it possibly irrelevant, because of the nature of the setup of the files, but certainly is not an excuse for bringing nothing; and, as I recall, again from the deposition of Mr. Foley, he testified from the way we had described the documents in our motion to produce last spring he had not had much difficulty in locating those things. Although we had not been able to describe specifically every document that we want in the subpoena description, from Mr. Foley's statement and from his long association with the Society, we feel confident that it would be possible for him to locate that material.

I would like to state again here that the motion is in the form of a motion to inspect or, in the alternative, for subpoenas duces tecum, and we are still ready to go down there and inspect the files if your Honor will so allow us.

Mr. Jaureguy also stated he has turned over to us the records of the disposition in the disciplinary proceedings.

I may be wrong, but I think those papers turned over
592 were specifically the records of disciplinary proceedings of the Multnomah County Medical Society. Mr. Foley testified in his deposition there were also some files of disciplinary proceedings in the files or records of the Multnomah County Medical Society—I mean the Oregon State Medical Society. There were proceedings had on review, as I take it, from not only the Multnomah County Medical Society but from other county societies throughout the state. We do have those papers giving, in brief, the type of disposition on some disciplinary proceedings in the Multnomah County Medical Society files; but we do not have the transcripts of the actual proceedings, except in one instance.

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Mr. Weinstein: It is true, your Honor, defefendants have turned over a great many documents, and we have quite a few documents downstairs already prepared for the case;

but the fact is there does seem to be one major soft
603 spot, and that is the OSMS correspondence.

Not all we have been able to get has been material which we happen to see specifically from reading the minutes, or wherever else we would see it, where we say we want a letter dated so-and-so, but we think the whole flock of it is material, the whole correspondence on the letterhead of the AMA on through to the lower echelons of the county societies.

If Mr. Jaureguy objects to one man or an assistant going through all of those files and determining whether something does or does not reasonably come within what we are asking for, if there is merit to that objection, I say we are willing to go down there and do that ourselves.

The Court: I think you had better prepare yourselves on this. I have never given anybody, a private litigant or the Government, an order on anybody to put them into their general correspondence. You have got to convince me that is good American law.

Mr. Weinstein: If I may proffer this, your Honor, instead of asking carte blanche to go down there and go through the whole OSMS file, I would say we more specifically would like to read the OSMS correspondence and, if, in order to read the relevant material, we have to go down there and read the whole file, we are willing to do that. We do not say the Court should let us do that and that that is what we want. We are just saying that ultimately we would like to read the relevant material in the OSMS file.

604 The Court: Let's be realistic about that, now. In order to do what you want, you have to read it all. Let's deal with the situation as it is.

Mr. Weinstein: In that case, your Honor, then, if your Honor thinks it is too much for us to be allowed to go down there and go through the general files, then in that case we have made this motion, as Mr. Galassi has said, in the alternative for subpoenas duces tecum. In that case, let Mr. Foley or his administrative assistant decide which of the correspondence files are relevant; but it seems to me the difficulty here is that the Court would simply be allowing us to go into the files, whereas, in other instances, like in the case of the OPS, I think the FBI has already been in there. I don't know, but I don't think any harm was done by their having general access to the OPS files on other occasions.

The Court: It is not a question of harm. It is a question of what is right and the point of view that seeks to maintain it. Oftentimes we have what is a very valuable right—

Mr. Weinstein: We respect that right, I am sure, just as much as defendants' counsel or any American would, but our contention is that these are relevant documents to the case. If the ends of justice require that those documents be brought into court, we are using the traditional method. We are willing to subpoena these documents, but

605 then defendants' counsel say, "You are asking us to go through this tremendous mass of documents and

we just cannot do it." That is when we come in and say, "Well, if your objection is simply that it is just a superman's burden to do that, we are willing to devote that manpower."

The Court: Mr. Weinstein, the traditional method gave you a very narrow right. You could not go on a fishing expedition. These are the words of the Great Liberal in a case where he used the expression about sweeping our traditions into the fire. We walked away from the Great Liberal when we adopted the Federal Rules of Civil Procedure and allowed a plaintiff, much more generously than he had ever been allowed before, to make his case out of the defendant's mouth. That is what modern discovery is. That is the general basis of it. While we have had these new rules for about nine years now, nine or ten years, we are still seeking to find the new frontier in this field.

As far as your going down into their offices and particularly into their correspondence, it must be borne in mind that is their correspondence, their private correspondence. Furthermore, a precedent is involved. All I say this morning is, I have never ordered anybody, nor have I ever been asked before, to compel a party to let his adversary go into into his offices and have unrestricted access to his files.

Mr. Weinstein: May I suggest in that case that we may consider this as a motion for subpoenaing the files and records?

606 The Court: We still have that before us. I have that distinction in mind.

Mr. Weinstein: I beg your pardon?

The Court: The OPA did a lot of this kind of business—going back to the question of administrative hearings—when they subpoenaed people to bring all their records and files. A lot of people did because they did not know any better or were not clear about it. They also sent investigators into people's offices. They showed their credentials and these people, in many cases, let them go through all their records and files. I had many cases here where that was the background. I have thought over the last five or six years very seriously about this whole thing.

I know not all wrongdoing is punished in the world. I might disagree this morning with our United States Attorney about a case he had in his office which he might not think justifies prosecution, even though there has actually been an offense committed, and I might think that it did.

It is very vast ground the Federal Court is working on in permitting plaintiffs who feel they are aggrieved, even though it be the Government, to make their case out of information the defendant has. That is why I have allowed a good deal of time here, so that we could have a good, full, free talk about this thing. Nobody need be rushed.

Mr. Weinstein: Does your Honor consider any
607 merit to this distinction? I don't know about these OPA cases, but I simply wonder if your Honor would distinguish between a case where the investigators go and get a man's files at the beginning, before they know whether or not there has been any offense committed, and they are trying to find out if there has been, and a case of rifling the files and looking for evidence and—

The Court: You may feel there has been an offense committed here, but Mr. Jaureguy does not.

Mr. Weinstein: I might point out that we are now in the stage of pre-trial proceeding. We are not in the stage of determining whether or not to bring an action.

The Court: You have already brought the action.

Mr. Weinstein: It is not a question of threatening an action or bringing an action. It is a question of a case already in court. We are simply trying to use the accepted means of bringing into court evidence that we think is relevant, if the case is properly to be tried by ourselves.

We are confronted, your Honor, with the problem of securing that evidence when there is evidence that is relevant, and the only place we can get it is from an organization that is also a defendant. We are presented with that problem.

The Court: I can say, there are lots of offenses that have gone unpunished.

Clerk, you are going to get these things for me to read, so we are going now to adjourn until monday morning.

(Adjournment)

608

Portland, Oregon
Monday, Sept. 12, 1949

Before:

Honorable Claude McColloch, *Judge*.

Appearances:

Mr. Gerard G. Galassi, Attorney, Seattle Office, Anti-Trust Division.

Mr. Nicholas Jaureguy and Mr. John J. Coughlin, of Attorneys for Defendants.

Mr. Galassi: I believe your Honor had indicated that our motion to inspect or, in the alternative, to issue subpoenas duces tecum to the Oregon State Medical Society and—

The Court: What I said was that I would read the despositions that you asked me to read, before ruling, and then we would adjourn the hearing. I have read them and now I would be glad to hear either one of you further.

Mr. Galassi: I have nothing further to add.

The Court: Well, then, I will tell you what I have in mind. I think the time has come now for you to allow me to go into what you have accumulated so far. I want to see what you have got. I understand you have a couple hundred letters and a lot of other things.

Mr. Galassi: I am afraid I am not clear as to that.

The Court: What is not clear about that? I want
609 you to bring in your stuff that you have got and I want to see what you have got so far. You are asking for a lot more. I want to see what you have got so far.

Mr. Galassi: All the documents?

The Court: That is what we are talking about, all the documents. I have to read them sometime.

Mr. Galassi: Would you like me to bring them up now, your Honor?

The Court: I don't mean to do it right at this minute.

Mr. Galassi: No.

The Court: No. You are asking me to make an expensive order of discovery on the defendants.

Mr. Galassi: Yes.

The Court: I think I need to see what you have got so far.

Mr. Galassi: What we have, your Honor, is, I would say, a good-sized filing cabinet of photostats and other documents. What has been obtained from the defendants here has been mingled in with a number of others, and it would be hard for me to separate particular ones from the rest.

The Court: I am not asking you to do that. I have got to begin to learn more about the case, and I want to see all that you have had marked so far. That is the purpose of pre-trial.

Mr. Galassi: Would you just prefer to our first documents that we have selected and had marked with pre-trial numbers?

The Court: If you wish.

610 Mr. Galassi: We could do it perhaps in that way more satisfactorily.

The Court: Just as you wish. I might as well tell you that after I see what you have got I am going over to Mr. Foley's office and look for myself to see what he has there. I do not mean that I am going to spend a day or week doing that, but I am going to make a call on Mr. Foley as you did the other day, Mr. Jaureguy.

Mr. Jaureguy: Yes.

The Court: I think I had better begin to learn more about the case and see what documents you have accumulated. It may take some time. You might have to come up here several mornings. As I told you gentlemen before, as generally I can hear you whenever you are ready; whenever there is no conflict with Bar Association dates, I will be ready.

Mr. Galassi: Your Honor, Mr. Marcus has returned to Washington, and we do not expect to have any further appearances between now and the 1st of October.

The Court: I won't be here the 1st of October. Don't get tripped up on that. I have to go to Medford for the Medford Term the 1st of October. How long that will be I do not know. I know that we will be back here the 18th, but how long we will be there we have no way of knowing. Half the Klamath Indians might kill off the other half between now and then.

Mr. Galassi: I think, your Honor, I can get these documents in question to you sometime this week.

611 The Court: I suppose I will have to take a lot of them home with me over a period of days or

nights, but you will want to be here, of course, to tell me what is what. Part of Mr. Jaureguy's position is that whatever is over there is cumulative of things you already have. You have said that several times.

Mr. Jaureguy: That is correct.

The Court: I will need, first, to see what they already have.

Mr. Galassi: Would your Honor care to set a date, after you have had a chance to look at them, if I could bring the first batch up here today maybe, or tomorrow?

The Court: Mr. Jaureguy will want to know what you are giving me. You will want to be here?

Mr. Jaureguy: We have examined, I think—I may be wrong, but it seems to me we have examined between 175 and 200 on which pre-trial numbers have been affixed. Of course, under the rules of Court those are really in the custody of the Court. However, we entered into a stipulation, with the approval of the Court, that they could be kept down in the office of counsel.

The Court: Let me start with those, then.

Mr. Jaureguy: Yes. As far as the hearing is concerned, I do not care to be present when they are handed to your Honor.

The Court: Let me start with those, then.

612. Mr. Jaureguy: All of those, your Honor?

The Court: Yes.

Mr. Jaureguy: Then I have been told—I think it is proper for me to say this to the Court. I have been told by Counsel for the Government that they expect very soon to hand me a bunch more with pre-trial numbers.

We entered into an agreement that, instead of my being here when they were handed to the Reporter, that they would be handed to the reporter who would put pre-trial numbers on them, and then, from time to time, they would let me see them.

The Court: Let me start with what you have now.

Mr. Jaureguy: That would take quite a little time, your Monor.

The Court: But, still, I have to go through them anyway and I will go through them pretty fast.

Mr. Galassi: I will bring up all the documents we have with pre-trial numbers.

The Court: That is right. Would you give them to the Clerk.

Mr. Jaureguy: I do not think they have as yet given us the photostatic copies—No, I take that back. I don't

think they have yet handed me any with pre-trial numbers on—photostatic copies of minutes of the various societies.

The Court: Let me start with what has already been marked.

Mr. Galassi: May I ask this? You would like, before you would be able to rule, to see everything we
613 have got?

The Court: I am going to start with what you have got marked. It may be lead to that.

Mr. Galassi: Because Mr. Marcus is going through them and picking out certain ones.

The Court: You mean he has taken a lot with him?

Mr. Galassi: He has got some with him. I do not happen to know myself just what he has.

The Court: I understand. We cannot see what is not here. We will start with what you have marked and then we will see what that leads us to.

Mr. Jaureguy: I wonder, your Honor, if your Honor would mind if I sat over there during other proceedings, in order to examine the exhibits?

The Court: Certainly. Thank you, Mr. Galassi.

Mr. Galassi: Thank you.

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615 UNITED STATES DISTRICT COURT

[TITLE OMITTED]

Transcript of Proceedings of October 10, 1949

Portland, Oregon
Monday, October 10, 1949
A. M.

Before:

Honorable Claude McColloch, Judge.

Appearances:

Mr. Philip Marcus, Special Assistant to the Attorney-General.

Messrs. Isidore Cohen, Gerard G. Galassi and Robert H. Weinstein; Attorneys, Seattle Office, Anti-Trust Division.
Attorneys for Plaintiff.

Mr. Nicholas Jaureguy and Mr. John J. Coughlin, of Attorneys for Defendants.

Mr. Marcus: Your Honor, there are a few matters that we would like to bring to your Honor's attention this morning. The first matter is somewhat personal. With your Honor's permission, I would like to be sworn in as a general member of this court. I filed my application papers and received notice during the summer to appear on a date certain during the summer. I was unable to do so, and that is why I am making the application now.

The Court: Administer the oath, Clerk.

(Oath administered to Mr. Marcus.)

Mr. Marcus: Then, your Honor, we have made a motion for the issuance of a subpoena to out-of-state witnesses and we have an order to present on that at this time. Since that order was prepared, just this morning the Marshal has advised us that one of the witnesses, who had resided in Roseburg, Oregon, is now in San Diego, California, and I should like to have our motion and order amended to include this individual. His name is H. H. Cleland, San Diego Gas & Electric Company, San Diego, California.

The Court: Is there a special statute covering out-of-state subpoenas in anti-trust cases?

Mr. Marcus: Yes, there is.

The Court: Are you familiar with that?

Mr. Jaureguy: Yes, your Honor.

The Court: You may amend the order.

Mr. Marcus: We hope sometime today, your
617 Honor, to be able to give your Honor a trial brief in this case and, of course, counsel for the defendants as well.

There is still here for determination by your Honor motions with respect to the inspection of documents of the Oregon State Medical Society and the Multnomah County Medical Society, or, in the alternative, the issuance of subpoenas to those defendants, and I wonder if your Honor is ready to rule on those motions.

The Court: I will be prepared to discuss that with you at 10:00 o'clock in the morning.

Mr. Marcus: Tomorrow?

The Court: Tomorrow at 10:00.

Mr. Marcus: With your Honor's permission, on next Tuesday, when the trial is scheduled to start, I would like to make an opening statement. I do not know whether Mr. Jaureguy desires to do so at that time or not. We will then have some documents to offer, and I should like to be able to

put our first witness on in the afternoon. If that is satisfactory, I will be able to notify the witness that that is the purpose, so as to have him appear in court in the afternoon.

The Court: Do you object to that?

Mr. Jaureguy: I have no objection to that. I might make this suggestion. I certainly am not urging it as the procedure to be followed, but at one time your Honor asked me to discuss the differences between our case and the American Medical case which was tried in Washington, D. C. I
618 would like to suggest that, while it is a little unusual, the discussion of that case be combined with the opening statements.

The Court: I will be glad to hear either side now or at any time about their theories of the case or what they expect to prove. I will have the run of the mill during the week, but otherwise I will be available at 10:00 o'clock, with such interruptions as there may be, to hear anything about this case.

Mr. Jaureguy: I would much prefer to defer discussion of that until next Tuesday or sometime later if your Honor has no objection.

The Court: He is going to give you a trial brief this afternoon. It may change your mind.

Mr. Jaureguy: Maybe so.

Mr. Marcus: One other thing, your Honor. To the best of our ability, we will endeavor to let counsel for the defendants know at least one day in advance the names of our witnesses whom we expect to have on the next day. I would be happy to receive the same courtesy from defendants' counsel when they put on their witnesses.

The Court: How does it look to you now? How many witnesses do you think you are going to call?

Mr. Marcus: I really do not know, your Honor. I would hope that we would not have to use all the witnesses that have been subpoenaed. We do have a great many documents, and some of those documents, as the trial develops, may obviate the necessity of actually calling some
619 of the witnesses.

The Court: The Reporter tells me that there have been over a thousand documents marked.

Mr. Jaureguy: 1106. Some of them, however, have several documents in one exhibit, under one number.

The Court: What are you going to do with them? Are you going to put them all in, offer them all?

Mr. Marcus: No, your Honor. I would say probably a large number of those documents will actually be offered, but I certainly hope not to have to put all of them in.

The Court: You might just as well. I have run through all of them.

Mr. Marcus: Some of them are cumulative and would merely encumber the record. In a few instances, in going over them very recently, I have found duplicated documents.

The Court: Here is what we try to do—at least I do—to avoid the old-fashioned tedious process of putting documents in through the progress of the trial. In a non-jury case I ask the lawyers usually to bring in their documents at the outset and then, if they want to refer to them in any way, either in the course of examination of witnesses or in any other way, why, they are here. I have never known anyone to suffer by it. I was just asking what you proposed to do.

I ask them to bring in what they have marked as pre-trial exhibits and put in everything that has been so
620 marked, subject to objections that may be stated at the time or any time during the time of trial by their opponents, and with the privilege of withdrawing any that they may not have use for at the conclusion of the trial, or that they may not wish to remain as exhibits. That works out very nicely and saves a waste of time as well as a lot of ensuing nervous irritation.

Mr. Marcus: I think we can certainly accommodate ourselves to that practice, your Honor. Undoubtedly we will want to withdraw some documents. I have in mind instances where we have had documents marked, contracts of various associations, merely to show interstate commerce. When you get several of that type of contracts from the same company, the same association, having the same particular paragraph we are interested in, it is just an accumulation.

The Court: You still have not answered whether you are going to get through in a week, in a month or in a year with your oral witnesses.

Mr. Marcus: I really cannot tell, your Honor. In part, that will be determined upon the attitude of defendants' counsel.

The Court: I don't see what that has to do with it. You know how your case shapes up now. All right, if you do not want to commit yourself.

How many documents are you going to have?

Mr. Jaureguy: I do not know, your Honor. I have been spending a lot of time lately going through their
621 documents and it has been more of a chore than I had thought. Without any criticism—I am not criticizing counsel at all—they recently re-shuffled them.

The Court: Who re-shuffled them? I think I did that.

Mr. Jaureguy: No. I mean the way in which I had them originally is different than the way they are now, with their present pre-trial numbers. That means I have got to pick out those I have not yet seen and then I have to study them to determine whether I am going to offer them or not.

The Court: You do not have to decide about your documents until you get ready to put your case in.

Mr. Jaureguy: I will have quite a few, in addition to those.

The Court: But the others you can put in, Mr. Marcus. You know how it goes here Mr. Jaureguy.

Mr. Jaureguy: Yes.

The Court: We usually just put them in at the beginning of the trial engrosse. It usually works out very well. That is all you want to say this morning?

Mr. Galassi: I have one minor point. Since the complaint was filed in this case, we have been asking somebody from the United States Attorney's office to sign our pleadings and motions and so forth, and I was wondering if now it would be necessary to continue that practice.

The Court: What is the difficulty? That does not impose any burden. You are all in the same rooms.

622 Mr. Galassi: Sometimes Mr. Harr or another attorney is not present and we have to keep running back or we have to interrupt him in whatever he is doing.

The Court: You are just blowing that up into something. I am not impressed at all about your difficulty. You just don't want to do it. I know the agency point of view and the Washington point of view about local counsel. You just keep having somebody sign them down there.

Mr. Jaureguy: I have a matter, your Honor, that I think possibly might be taken up with counsel, but I got a communication from them this morning. If it was intended to carry out the understanding or agreement made a couple of months ago, I don't think it does. We asked them if, prior to the trial, they would advise us to what extent they agreed with the statements made by us in our answer to interrogatories.

The letter which I received from them says that certain answers are not satisfactory, but I don't know what he means by being not satisfactory to them—whether they are not satisfactory to them or whether they disagree with the facts or what. I understood that they were going to advise us as to the statements made in our answer, the truth of them.

The Court: We will talk about that in the morning. This gives them notice.

Do you have a copy of the complaint there, anybody? Don't go for it. It is not necessary.

623 I want to talk about a little matter. Since everything is going along so quietly and nicely, I will try to keep what I have to say on the same level.

I notice that the propaganda bureaus on both sides have started to work. I happened to clip out some statements which have been issued to the press, apparently by both sides. I just want to tell you what the point of view of this Court is about trying cases in the newspapers.

The first article I have here is signed by Paul R. Leach and is entitled "Chicago Daily News Service, Washington, October 3." It occupied parts of two columns of the Morning Oregonian of October 4th. I see that I was absent-minded in putting on the date here. I have it marked "October 4, 1948." It was really 1949, wasn't it?

Down towards the end, Mr. Bergson gets into the article and, after summing up what his complaint charges, he then concludes with this statement of his own:

"The elimination of these unlawful practices in the vital fields of prepaid medical care should be of considerable benefit to the public. The Sherman Anti-Trust Law is designed to foster competition as opposed to combination in restraint of trade. The purpose of this action is to restore that competition."

He is referring, in what I have just referred to, to the Portland case, which the article had previously stated had reached the court stage, the trial to begin October 18th.

624 Prior to that Mr. Bergson says in his statement:

"The defendants have obstructed medical care organizations other than those sponsored by them . . . hindering competing organizations in their attempts to procure doctors and in obtaining hospital facilities for their members."

I confess it is difficult to draw a line there as to what Mr. Bergson was merely quoting from the complaint and what was his own comment on that subject and the results that he hoped to obtain.

Now, then, that statement was issued on October 3rd. Then, on October 6th, I have this clipping from the Oregon Journal, Thursday, October 6th, entitled "AMA Assails 'Terrorizing' by U. S. Unit."

It reads: "Chicago, October 6 (AP). Trustees of the American Medical Association said today that the AMA and 16 state and county medical societies are being investigated by the anti-trust division of the Justice Department.

"The Board of Trustees issued a statement 'protesting the use of the police arm of the Government in a campaign to discredit American medicine and terrorize physicians into abandoning their opposition to compulsory health insurance.' "

I suppose that was a counterclaim by the American Medical Association following the opening gun by Mr. Bergson a few days previous.

Now, Gentlemen, we will get along without any more of that in this case. I expect counsel on both sides, within their power, to see that we do not have any more of that until the case is tried.

625

I recognize, Mr. Jaureguy, you cannot control the American Medical Association. They are not your client. But you can exercise some influence on them.

And, as to you, Mr. Marcus, and your associates, Mr. Bergson's name I believe is on the complaint in this case, and you can tell him for me that it does not accord with our practice, in an anti-trust or any other case, for a lawyer whose name is in the pleadings to be issuing statements in advance of the trial of the case as to what he expects to prove or what he expects to accomplish. The law as to this is in a state of flux, I realize that, in this country. It is a subject that I happen to have had occasion to give some particular attention to, and there is no better time-honored statement that has ever been made than the old-fashioned one I heard at the time I first began to practice law, about trying cases in the newspapers. There are a lot of other ways to phrase that, but that is what it comes down to.

We just do not approve of that here, and it is very seldom that we ever have to say anything about it. That is all I have to say on that.

Mr. Marcus: May I make this inquiry, your Honor? If the documents are tendered at the beginning of the trial, if objections are made with respect to their admissibility, are those—when are those objections heard? I am just trying to understand what may be called for under your practice.

626

The Court: After the sifting-out process of pre-trial, which you have been going through, and in the usual case where that has been done, there are rarely objections made,

it has been my experience. I always save to the opposing side the right to object, but after counsel have been in contact as much as you gentlemen have, and for so long a period, the thing usually clears itself.

But, answering that question directly, if you handed me 1160 documents next Tuesday and told me they were the ones that I had already seen and they were the ones you had discussed with Mr. Jaureguy, one way or the other, in the preparation of the case, and you felt they were all admissible, why, I would ask Mr. Jaureguy to agree, first, that they were what they purported to be on their face, the authenticity of them, and I would not ask him to agree to anything but I would admit them all at that stage of the case, subject to such objections as Mr. Jaureguy and Mr. Coughlin might then have to make or might at any time make throughout the trial and before final submission.

I have seen cases shape up where, after the last witness is through testifying and the last gun has been fired, Counsel then ask for an opportunity to be heard, or may even want to draw up a short document and file objections. It is a good idea, then, to put it in written form.

627 Mr. Marcus: I think that would work out very well. Mr. Jaureguy is going to furnish us, before trial, with a statement as to authenticity and admissibility.

The Court: Then I will hear you in the morning at 10:00 o'clock, at which time I will rule on the pending motions and anything else that you may want to present.

REPORTER'S CERTIFICATE

I, Ira G. Holcomb, Official Reporter of the above-entitled Court, do hereby certify that on Monday, October 10, 1949, I reported in shorthand certain proceedings had in the above-entitled matter, that I thereafter caused my said shorthand notes to be reduced to typewriting under my direction, and that the foregoing transcript, consisting of Pages numbered 1 to 13, both inclusive, constitutes a full, true and accurate transcript of said proceedings so taken by me in shorthand on said date, as aforesaid, and of the whole thereof.

Dated this 11th day of October, A. D. 1949.

(Signed) IRA G. HOLCOMB
IRA G. HOLCOMB
Official Reporter

1 IN UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Civil No. 4255

UNITED STATES OF AMERICA,

Plaintiff,

—vs.—

OREGON STATE MEDICAL SOCIETY, *et al.*,

Defendants.

Reporters' Transcript of Trial Proceedings

Portland, Oregon
Tuesday, October 18, 1949
10:00 o'clock A. M.

BEFORE:

Honorable Claude McColloch, Judge.

APPEARANCES:

Mr. Philip Marcus, Special Assistant to the Attorney-General.

Messrs. Isidore Cohen, Gerard G. Galassi and Robert H. Weinstein, Attorneys, Seattle Office, Anti-Trust Division.

Appearing for Plaintiff.

Mr. Nicholas Jaureguy (Cake, Jaureguy & Tooze), and Mr. John J. Coughlin (Griffith, Peck, Phillips & Coughlin), Attorneys for Defendants.

2 Mr. Jaureguy: There are some witnesses in back of the room that are subpoenaed. They have been asking me about it. I don't know anything about it.

The Court: Proceed.

(The Court then proceeded to the transaction of other business.)

The Court: Mr. Jaureguy, did you have something?

Mr. Jaureguy: There have been two or three men in the back of the room that have come up to me and shown me subpoenas and wanted to know what it was all about. I have told them that I would call attention to that, call the attention of counsel and of your Honor.

Mr. Marcus: We will confer with them at noontime. If they are here, it is in error.

PLAINTIFF'S OPENING STATEMENT

Mr. Marcus: May it please the Court, it is, I believe, just exactly a year ago that the complaint in this case was filed against these defendants. The defendants are charged with combining and conspiring to restrain, restrict and monopolize prepaid medical care in the State of Oregon. Since that time the defendants have filed answers, denying the substantive allegations of the complaint. In response to interrogatories served by the plaintiff defendants have filed answers to the interrogatories, many of which we do not regard as satisfactory but, in order
3 to expedite the trial, we are not pressing at this time.

In response to various orders to produce, defendants have turned over a number of documents to the Government. A number of documents, however, which have been requested in those orders have not been received, and we propose to file in court a statement of the items we have not received. A great many documents of the plaintiff have been given pre-trial numbers and have been made available to the Court and counsel for their observation.

We propose today to begin our proffer of proof in support of the allegations of the complaint, but, first, I should like to make a brief and somewhat general statement as to the purpose of this suit, what we propose to prove and the nature of the proof to be offered.

The defendants in this case are the Oregon State Medical Society, the Clackamas, Clatsop, Columbia, Douglas, Jackson, Lane, Marion-Polk and Multnomah County Medical Societies, and eight different individual doctors.

There are others who have participated in this conspiracy. Those include other county medical societies, other prepaid medical care organizations affiliated with the Oregon Physicians' Service, and many other individual doctors.

The purpose of this suit is not to disturb doctors in their normal pursuits, nor is this an attack, as such, against medical societies.

4 There are few of us in the courtroom today, your Honor, who do not owe their health or perhaps even their lives to the members of the medical profession. They stand very high among those who have benefited mankind. We think much good may be said of medical societies in

general, for among their useful functions is included that of serving as clearing houses for the exchange of medical knowledge among doctors.

But, as is shown in a case brought by the Government in the District of Columbia some ten years ago against the American Medical Association and the Medical Society of the District of Columbia, groups of doctors at times have combined and embarked upon a campaign of intimidation and opposition with respect to prepaid medical care organizations.

Such activities, if performed by merchants or ordinary trade associations, would clearly be deemed inimical to the public welfare, and in many suits under the Sherman Act they have been held to have violated that Act. They gain, we think, no high legitimacy when performed by doctors of the medical profession. In fact, the high standards of that profession make those activities even more heinous than when performed by groups who do not enjoy the high esteem in the public's mind that the medical profession does.

We propose to show that the Oregon State Medical Society and the other defendants, both before and since 1936, have combined and conspired to restrict and monopolize, and have carried out such conspiracy, with respect to prepaid medical care.

With minor exceptions, our proof will begin with January, 1936, although some factors of this conspiracy existed prior to that time.

Our case is broader than that, your Honor, broader than that of an attack by these defendants against certain hospital associations; nor is it confined merely to the matter of expulsion of doctors from medical societies.

But, since we shall undoubtedly hear much about these associations during the course of the trial, I should like at this time to say a few words in that connection.

The State of Oregon is commonly regarded as the pioneer in the United States in the prepaid medical care field, and it has been these associations which have pioneered in that field.

In this country we regard the profit motive as a potent lever towards raising the standards of living which we enjoy. These associations were profit-making organizations. They were entrepreneurs in the true sense of the word; long before the organized medical profession in this state were willing to afford the people of this state prepaid medical care these associations made such care

available, not only to residents of this state but to residents of other states.

The Hospital Association Law of 1917 is a testi-
6 monial of the recognition afforded by the Legislature of this state to the valuable service performed by these associations. These associations file annual reports with the Insurance Commissioner of this state.

The medical problem has its economic side, and somewhat sadly I acknowledge that is true of the legal profession as well as other professions. It is on that side that we charge these activities of the defendants fall.

It was the president of the Oregon State Medical Society who, in a speech in January, 1936, stated, and I quote: "An organization of the physicians of a community is in some measure similar to that of retail merchants. That is, it is an organization of competitors and the smaller the community covered by such organization the more pronounced is the competitive feature."

He went on to state: "A state medical society would disregard one of its objects if it did not give a due amount of time and attention to fostering the material interests of its members."

We propose to show sometime before 1936 an organization known as the Multnomah Industrial Hospital Association was formed in order to provide prepaid medical care to subscribers; that this association was sponsored by physicians; that by 1936 it was under investigation by these defendants and, shortly thereafter, the association was eliminated entirely by these defendants.

7 We propose to show that there were other prepaid medical care organizations that fell by the wayside because of the activities of these defendants, and we propose to show that many other hospital associations have been restricted in their activities by these defendants.

We shall show that in 1936, and in subsequent years, these defendants embarked upon a ruthless campaign to terrorize doctors who associated themselves with prepaid medical care plans not approved by these defendants.

We shall show that many doctors were expelled from defendant societies because they participated in such prepaid medical care activities.

We shall show that other doctors were forced to resign because of such association.

We shall show that still other doctors were forced to promise that they would not associate with these prepaid medical care organizations not approved by the defendants,

and we shall show that these defendants have caused many doctors throughout the state to refuse to accept tickets of hospital associations not approved by the defendants.

We shall show that this conspiracy was aimed not only against hospital associations but also against fraternal organizations and other organizations which sought to provide for their members prepaid medical care.

8 We shall show that these defendants formed their own prepaid medical care organizations, and that one of the primary purposes for such formation was the elimination of these hospital associations which had not been approved by them.

We shall show that another reason these defendants had in forming such prepaid medical care organizations was to restrict the coverage of prepaid medical care policies in the State of Oregon.

We shall show that these defendants, among themselves and their affiliated groups, have allocated territory within the State of Oregon within which they have agreed not to compete with one another.

We shall show that they agreed to fix and have fixed fees of physicians associated with them to charge their patients receiving medical care under prepaid medical care contracts.

We shall show that this conspiracy has been continuous and continues. We shall show that at times the means used in carrying out this conspiracy have varied, but that at any particular time there was always one means or another being used by these defendants.

The proof offered by the Government is designed not only to show that the defendants have violated the Sherman Act but also to support the prayer for relief embodied in the complaint.

9 I think I have said enough with respect to what we expect to prove in this case, and I should like to address myself briefly to the nature of the proof to be offered.

For the most part, our case is documentary. We believe that the documents to be offered in evidence in and of themselves convict the defendants of the charges made in the complaint. In addition, however, we propose to introduce and offer witnesses to show the nature of the conspiracy and its effects.

We have no intention of turning this trial into a marathon, which we might very well do if we attempted to offer witnesses with respect to every incident connected with this conspiracy which has come to our attention.

We propose, therefore, to select a sufficient number of witnesses and a sufficient number of incidents so as to round out the outline of this conspiracy and to show typical incidents and typical effects.

Proof will be offered also as to the interstate aspect of this case. In good part that proof also will be documentary.

Let me emphasize at this point that this suit is designed to encourage the growth of prepaid medical care plans in the State of Oregon under free competitive forces. It is designed to remove restrictions which prevent the people of Oregon from choosing a particular prepaid medical care plan which they might desire in a free competitive
10 market.

There are some who disagree with the policy of the Sherman Act, but it is the law of the land. The premise of the Sherman Act is that society benefits by the presence of competition and not by its absence. We think that premise obtains in Oregon as well as elsewhere.

DEFENDANTS' OPENING STATEMENT

Mr. Jaureguy: May it please the Court, Counsel has given us an analysis of the purposes of this suit. His analysis differs from my own. I think when this case is finally analyzed we can come to only one conclusion and that is that this case will determine whether the doctors of Oregon have anything to say about the practice of their profession, or whether they are going to be governed from Washington, D. C., in how they will practice their profession.

Counsel has said that this suit is designed to encourage the growth of further medical care plans. They have chosen as a test for their campaign a state which has more extensive and more varied types of prepaid medical care plans than any other state in the union, a state that pioneered not only, as Counsel has said, in hospital associations, but a state which pioneered in doctor-sponsored prepaid medical care plans.

As a matter of fact, I think the first prepaid medical care plan in this state was not a hospital association but was a group of doctors—a prepaid medical care plan
11 that is going to figure rather prominently in this case—and was started by one of the very prominent citizens of this state, Dr. William Kuykendall of Eugene in 1903, who started a system of prepaid medical care

plans, and it expanded and now is known as the Eugene Hospital & Clinic in Eugene.

A few days ago I told your Honor, largely in response to a question your Honor had asked me prior to that time, that I proposed to combine with my opening statement an analysis of the suit which Counsel has mentioned that was brought back in Washington, D. C., against the American Medical Association, the District of Columbia Medical Society and others, very often referred to as the American Medical Association case, and I propose to do it.

The Court of Appeals and the Supreme Court in that case said in that case there was an attempt to restrain persons of modest means from obtaining prepaid medical care.

In that case there was a non-profit organization formed by certain Government employees. and those persons, those persons of modest means, employed their own doctors for the purpose of rendering them prepaid medical care.

12 The Court of Appeals went out of its way to contrast that organization of persons who employed their own doctors and the type of hospital associations that have today been eulogized by counsel for the Government. Counsel for the Antitrust Division did not eulogize hospital associations in that case. And the Court of Appeals pointed out why, in many decisions, commercial hospital associations every time they had been before the courts had been held to be illegally engaged in the practice of medicine. And the Court of Appeals pointed out that the practice of medicine by hospital associations destroys the relationship of doctor and patient, and pointed out that under the group health plan that these people employed their own physicians, and there was no supervision by laymen as to the type of service that should be rendered by the physicians, whereas in the hospital association system there was interference in the doctor-patient relationship.

I shall in a few moments enlarge upon that and show the experiences of doctors and patients between 1936 and 1940 in this state.

Counsel on the first page of their brief, the printed brief that they have filed in this case, say that what there is at stake in this case is the right of doctors to experiment with new forms of medical care. Of course, that is not accurate. It is not the right to experiment with new forms of medical care. It is the right to experiment with new

forms of selling medical care. And we say in this
13 case what there is at stake is the right of doctors to experiment wth new forms of prepaid medical care, and that is the very thing that counsel in this case are endeavoring to destroy.

And here is another factor in this case that distinguishes it from the American Medical case, just like night from day. The Circuit Court of Appeals in that case, in the opinion in 130 Fed. that counsel has said is the best reasoned opinion of the three, or the one that goes more into detail, points out that in the American Medical case they had their choice either to destroy prepaid medical care or themselves go out in open competition with other forms of prepaid medical care, and they chose the former; whereas, in this case, at least ever since 1942, the doctors of Oregon, through the OPS have been out in open competition, methods of competition which we are ready to defend at any time and any place. In other words, whatever counsel might say about the period in Multnomah County between 1936 and 1940, we will show that the method of procedure that they followed then was entirely abandoned and now it is a case of not restraining competition. It is a case of creating competition, the very thing that the Sherman Act was designed to promote.

And I might mention many factual distinctions between the American Medical case and this case. In the American Medical case the organization known as Group Health, Incorporated—this was an organization that
14 employed their own physicians—was organized in January, 1937. In December, 1938, less than two years later, the indictment was brought, and at that time Group Health Incorporated for all practical purposes had been absolutely destroyed. In that period of twenty months the doctors of the District of Columbia had made it impossible for any doctor associated with Group Health to practice in any of the hospitals in Washington, D. C., or for any patient of Group Health to be admitted to a hospital and be treated by the doctors that they had chosen to treat them.

In this case they say that the conspiracy started on January 1, 1936, and today they say it was well started by that date. And now, eighteen years later, these very hospital associations that they say this conspiracy was designed to destroy have from three to four times as much income from the sale of prepaid medical care as they had at the time counsel say this conspiracy started.

Then, of course,—and maybe I should have started out with this distinction, because it is a distinction that Your Honor has met at the very threshold of this case—the American Medical Association case was not brought under the statute that this case is brought under. That case was brought under Section 3 of the Sherman Act, referring to the District of Columbia.

As your Honor well knows, Congress has the same powers over the District of Columbia that the Oregon Legislature has over the State of Oregon, and though the same words are used in Section 3 that are used in Section 1—that is, restraint of trade and commerce—the Supreme Court long prior to that time had held and continues to hold that the words "trade and commerce" have a different meaning when applied to the District of Columbia, because of the much greater powers of Congress in the District of Columbia, than the meaning which is to be attributed to it when the words must take their color and meaning from the constitutional provision which gives to Congress the right to regulate commerce among the several states.

Not only that, but it was entirely unnecessary, it follows from that, in that case for the Antitrust Division to prove that there was any interstate commerce involved at all. I am not going to review the many authorities this morning which I think will convince your Honor that in this case, even though that everything that counsel says is true, the doctors of Oregon have been restraining trade and commerce among the several states. I think I can summarize by saying that the Supreme Court of the United States will have to go much, much further than they have ever gone before in construing the Sherman Act if they find that the doctors of Oregon, restricted to Oregon in the practice of their profession, by anything that they have done or anything that they have been charged with doing, have restrained commerce among the several states.

I can't see how any court that decided the Apex case can possibly say that anything involved here is a restraint of commerce among the several states.

It is true drugs and medicines are bought from other jurisdictions and brought into this state, as counsel's voluminous exhibits will show. It is true patients come from other states into this state for the purpose of obtaining prepaid medical care; and it is true that if patients in this state happen to be in some other state when they are under

a prepaid medical plan and employ a physician there they are reimbursed. And it is even true that some of the patients under some of the prepaid medical plans, including the OPS, the same contract with an employer in this state covers employees in other states. But none of that has been restrained, even though the court should reach the conclusion that it is commerce, which we stoutly deny.

Now, to get back to this so-called conspiracy, I notice that counsel has emphasized, almost to the exclusion of everything else, certain events which took place between 1936 and 1941, or '40. This conspiracy, they say, was formed the first of January, or thereabouts, 1936, for the purpose of destroying these hospital associations, although counsel has already heard evidence that at the very first meeting of the Oregon State Medical Society after this conspiracy was said to have started the doctors of
17 Oregon elected a president-elect of their society, a leading doctor of this state, that doctors generally knew was very close in his cooperation with these very hospital associations that they say we were out to destroy. And a year later they elected that same doctor, who was one of the leading physicians in his cooperation with one of our leading hospital associations, as president of this organization. And we shall show that other presidents of the Oregon State Medical Society have done the very things by way of cooperating that they say those presidents were leading the conspiracy to destroy.

It is true that between 1936 and 1940 doctors were expelled from the Multnomah County Medical Society. Not for taking tickets, I may say to my friends. No doctor was ever expelled from the Multnomah County Medical Society or threatened with expulsion merely because he took a ticket or because he sent his bill into the association; but because of the practices which were indulged in at that time, and long since eliminated by these hospital associations, which these particular doctors were encouraging. We say that the Multnomah County Medical Society had a perfect right to do what it did; that it was enforcing its code of ethics. It was not out to destroy, but to enforce the conduct of members belonging to that society. That is all that happened in this case in Multnomah County. Counsel will not be able to point to a single instance in these
18 fourteen years or theretofore, when any doctor was ever kept off the staff of any hospital because of anything he did in cooperation with commercial hospital associations.

Contrast that with the American Medical Association case. Counsel, I believe, will not be able to point to a single instance of any patient ever denied admission to a hospital because that patient was a member of some prepaid medical care plan.

In 1936 as the documentary evidence of counsel for the Government will show, whatever individual doctors might have thought, the official position taken by the State Medical Society, or at least the Multnomah County Medical Society, was an opposition to all prepaid medical care plans, doctor sponsored, as well as commercial hospital associations. They made no distinction in that regard with respect to prepaid medical care plans then in existence in this state.

Now, they are out in open competition, as the evidence in this case will show. They are doing the very things that in 1936 the Multnomah County Medical Society condemned. Times change. What was considered improper fourteen years ago is considered entirely proper now. Their case is, their contention is that this was a state-wide conspiracy led by the Oregon State Medical Society. If I can understand anything from reading their complaint or from the statement that has just been made, that is it.

Now, I want to briefly review what happened in this state from 1936 to 1940. The last charge that was made against any doctor by the American Medical Society for cooperation with commercial hospital associations, the last attempt to expel them was in 1940. It is not a mere coincidence, your Honor, that in 1940 the first decision of the Court of Appeals in Washington, D. C., was given in the American Medical Society case involving expulsions. That is, it is not a mere coincidence that that was immediately followed by a cessation of these activities in expelling. By that I don't mean to suggest that that was the only reason or even the dominant reason, why that practice was discontinued. There were other reasons. They found they were not getting anywhere. You can't destroy a prepaid medical care plan, you can't affect it to any great extent by any such activities of that kind. And the doctors themselves by extensive research that you will find in the documents which counsel are going to introduce—or at least have marked as pre-trial exhibits—had themselves come to the conclusion that a moral obligation exists on the part of the doctors to furnish to persons in the low income groups a system of prepaid medical care; and so they themselves, starting about that time, as I say, en-

tered themselves into active competition with the same system that in 1936 they had disapproved.

20 Mr. Jaureguy (Continuing): Counsel has mentioned the Multnomah Industrial Health Association. That Association was organized by doctors about 1932 with the approval of the Multnomah Medical Society. In 1935 that approval was withdrawn because of activities that had been engaged in that other doctors thought were improper. In 1938 it was re-approved. It appears in this case under three or four different names, Multnomah Industrial Health Association, Multnomah Medical Service Bureau, Oregon Medical Service Bureau.

When OPS was formed it took over by mutual agreement, not by coercion or anything of the type, it took over the activities of that same organization. I don't know whether I can say to your Honor that a witness your Honor has heard also figures in this case, but perhaps a change in methods came about partly from that, and that is the witness that your Honor heard, a prominent physician, that all this was aroused by speeches made by Dr. Fishbein when he came out here in 1936. Maybe the influence of his oratory had disappeared by 1940 and 1941, 1942.

I want to say this before I go any further, and that is that I am not going to stand before this Court today, nor any time during this trial, and say that at any particular day or year the doctors of Oregon thought this or thought that, because it would be absolutely foolish to make any such a statement, because the doctors in Oregon, like other types of our citizenry, and I would say even more so, are individualists. Even today I could probably find a doctor in Oregon that would agree with almost anything

21 that counsel want to say about prepaid medical care or that I would want to say about it. They are not 100 per cent for anything. And so I say in 1936 some doctors thought this and some doctors thought that, and today, as in 1936, there are doctors in Oregon who are absolutely opposed to any type of prepaid medical care, and there are doctors in Oregon that think that prepaid medical care is the salvation of the medical profession in this state. There are probably doctors in Oregon that think it would be a fine thing, many of them I dare say, be a fine thing if OPS had a monopoly, and there are many doctors in Oregon that would be absolutely opposed to the elimination of the competition of commercial hospital associations, so that any shade of thought has been shared in at all times by some

doctors. And so when I say to your Honor that there were many reasons for the shift I mean to say that there are perhaps one of these reasons that was the only reason that this doctor had in mind and another reason was the only reason another doctor had in mind. Some doctors will say that he was for this doctor-sponsored plan or that one to destroy the hospital associations, and other doctors will say "I was for that prepaid medical care plan because I think the doctors owed a moral obligation to the people to furnish them a better type of prepaid medical care."

Well, now, I want to briefly review what took place
22 in the other counties during that period of time. I have been referring to Multnomah County. I don't think that counsel will be able to point to a single instance in any other county but Multnomah County where any doctor was ever even, was ever threatened with expulsion on account of his association with prepaid medical care plans. It is true as your Honor knows that down in Medford two doctors filed charges against another doctor, but that wasn't a threat by a medical society, because the medical society did absolutely nothing about it. And here is what was happening in the other counties. If this had been a statewide conspiracy we would have expected some continuity, something happening in all the rest of the state at the same time along the line of this conspiracy.

We first take up Lane County. Marion County, they went on just as they had gone from 1930 on. In Lane County in the fall of 1937 there was what I would call a concerted action, that is, many doctors doing the same thing at the same time, and I am not going to claim that each doctor had his own idea independently from the rest. There was a concert of action in December of 1937 in Lane County.

Counsel have produced letters that these doctors wrote to the hospital association and to patients and to employers saying that they would not take tickets or would not work for hospital associations, or something to that effect,
in December of 1937. I will come back to Lane
23 County in a moment. But, now, we go down to Medford.

After talk of doing it in 1937 they abandoned it and they didn't do it until 1938.

Prior to that time there had been formed down in Southern Oregon what was known as the Southern Oregon Medical Service Association, a group of doctors giving prepaid medical care. I think perhaps this concerted action

was more in Southern Oregon Medical Service Association than in the Jackson County Medical Society, because the ex-president of the State Society complained when they said, when the doctors down there themselves said, that they were sponsored by the—or formed by the—Medical Society.

But, at any rate, in November and December, 1938, the doctors of Jackson County, several of them, sent in their letters. I think if they had stopped to investigate what happened in Lane County, like the commercial hospital associations did, they wouldn't have bothered sending the letters, because some of the documents that the Government has produced, has in their files, will show letters written by commercial hospital associations to employers who had contracts with them in Medford, and the gist of it was this—and the facts bear me out when I say that those letters in this respect told the truth—they said, in effect, "Don't worry about these letters. We had similar boycott"—they called it a boycott—"in Eugene about a year ago, but it didn't bother us any. For a little while we had to resort to backdoor methods but we always found plenty of doctors to take care of our members, and as time went on it did us more good than harm." That is what they said. And that is what the doctors in Jackson County found, because less than two years later we find on the minutes of the Jackson County Medical Society, one of the minutes that Counsel has photostated but I have yet to find a pre-trial number on it—but I will put a pre-trial number on it and put it in evidence—but their so-called boycott against this society, the commercial hospital associations, was terminated; and a few months later on the minutes of the Jackson County Medical Society, that they have photostated but I will probably, I will have to put the pre-trial number on and offer in evidence—at a meeting of the Jackson County doctors, complaining that the Industrial Hospital Association didn't have them all on their lists and directing the Secretary to write a letter about them. And at that time the hospital association's main account and almost only account was the California-Oregon Power Company, and they instructed the Secretary to write a letter to that employer and ask that all the doctors be put on the list to service the Industrial Hospital Association accounts; and right in the minute book, with the Government having a photostated copy of it but we shall put it in evidence, is a copy of that letter in which they listed some twenty doctors of Jackson County,

the same doctors who less than two years before
25 had written these letters and saying, "We want you to add us all to it"; in other words, they were just begging to get back again.

Well, now, that was Jackson County from December, 1938, to September, 1941.

What was happening up in Clatsop County when that was happening in Jackson County? Five months after the doctors of Jackson County sent their letters saying, "We will not work for Industrial Hospital Association and National Hospital Association," five months after that Clatsop County passed a resolution on prepaid medical care, and they said, "We will work for National and Industrial but nobody else." And, who else was there down there in Clatsop County selling prepaid medical care in May, 1939, when Clatsop County passed that resolution other than Industrial and National Hospital Associations? Why, this same Multnomah medical care plan sponsored by doctors in Portland, who ten months before had been approved as a proper plan by the Medical Society. And so the doctors in Clatsop County when this conspiracy, so-called, was three years along said, "As far as we are concerned we are going to work for those that you disapprove and we are not going to work for the one that you do approve."

And then about two years later the doctors of Clatsop County had some conferences with Dr. Dammasch, who was at the head of this doctor-sponsored plan in Portland,
and they got together with him on the fees that he
26 was going to pay them, and so from then on they continued working for all three, and continued until about 1944 when the doctors down there, for reasons satisfactory to themselves, many of them refused to take tickets, as the expression goes.

Those were the main ones, those three counties.

Oh, I should tell your Honor that down in Klamath County, at the same time this was going on in the other counties, Klamath County took a position along the line of this conspiracy, except with exactly reverse English on it, just as Clatsop County had. And in Klamath County, it was either December, 1939, or January, 1940, they took a little different position. They said, "We will complete all the contracts we now have with the National and Industrial and others, but hereafter no doctor will work for them unless they put all of us on the list, take us all or none; and so the result was that from that they took them all. And that was at the time that the Klamath doctors

were forming, the very next time they were forming their prepaid medical care plan, the Klamath Medical Service Bureau, and they put that in their by-laws, that if one of them worked for a hospital association they all will work.

And those were the main ones. Now, down in Oregon City they formed their own prepaid medical care plan and they wrote letters in 1937. Down in Coos County, a group of doctors down in Coos County had a hospital and another group of doctors had another hospital, and they
27 wrote, because they had just formed their own prepaid medical care plan, and I don't think that one doctor out of five in those districts ever heard of policy at that time, so-called, of the State Medical Society. They just were forming their own prepaid medical care plans, and some of them, as in Clatsop County and in Klamath County, thought that they would do just as well or better to work for all of them themselves and their competitors, and others such as Oregon City and Bandon and Myrtle Point thought, Coquille, thought that, well, "We will handle our own, and there aren't very many, much, down here, and so we will just do our own."

The Court: Would you like to break your remarks at 11:00 o'clock?

Mr. Jaureguy: Yes.

(Short recess.)

28 Mr. Jaureguy: During this period I have been discussing, from 1936 to 1940, I have reviewed the localities where the doctors took, at various times and at some times, what might be called concerted activity, some one way and some the other, some for and some against, these commercial hospital associations.

The broad stretches of our state never were heard from at all. From Salem we start over to Eastern Oregon and we keep going until we get down to Klamath Falls. The Dalles—not a word until 1944, then a small group said, "We are not going to take it."

Pendleton? Pendleton is the home of Dr. John Brennan, one of the defendants in this case, one of the conspirators. I think if he had wanted to exert his influence he could have induced doctors to write letters of that kind.

Baker. LaGrande. They go down to Klamath Falls before there was anything in Eastern Oregon during that period of time, and they said, "We will all go to work for commercial hospital associations."

These concerted efforts that I am speaking about, where we speak of them acting in concert, did not last long. A year or two later the doctors were going on just as they had before. Then, as I have indicated, as far as the State Society was concerned, and many local societies, some-
29 place between 1940 and 1942 there was a change in methods, a change in their activities, until we find today, and for many years past, them doing what theretofore they did not—advertising, solicitation of patients, a free choice of physicians—either among doctors on the OPS or on any plan. I have given some of the reasons that actuated various doctors, until finally they decided that they would have their own prepaid medical care plans, those that did not have them before.

In Eugene they have had one from 1903. In Salem, from 1930, and various others. And, so, since 1942, the State Medical Society, in effect, has been in open competition, and that of course is one of the big distinctions between the American Medical Association case and this case, that parties who are in open competition may do things that would be considered improper if done by those who had no personal interest to further.

We do not deny, of course, that a lot of doctors in Oregon don't take tickets or send in their bills. They treat the patients just as private patients and render them the bills and the patients get indemnity.

I don't know how many—I think the evidence will show that some take tickets from the Industrial that don't take tickets from the National. A few—Fewer probably take tickets from the National that don't take tickets from the Industrial.

I am going to review briefly in a moment the reason why doctors do not take tickets. We will find many
30 of the doctors who wrote letters that counsel have gotten and propose to put in evidence, saying, "I won't work for you any more. I won't take tickets," who are now taking tickets. Others who never wrote letters are not taking tickets. Many of whom we are charged with having coerced are taking tickets. Some of the high officers of the Medical Society during this period are taking tickets and they have always taken tickets.

I don't know that the evidence will justify this conclusion because it is impossible to prove exactly, but I think, by and large, that there are probably as many doctors in this state taking tickets of one or more commercial med-

ical associations as there are doctors cooperating with OPS, because only about two-thirds of the doctors in this state are on the OPS cooperating list, and I think the evidence will show that many probably take tickets.

But now the question is why—and that is all that counsel have of substance; all that counsel have now is this ticket business. The rest is ancient history. It is a practice that has been abandoned. It is a practice that there are no threats to resume. It is not anything that your Honor needs to be concerned about except, as counsel might argue it as part of the background, so-called, of this case.

In the American Medical Association case the Circuit Court of Appeals three times, quoting from the famous English case that was given as an authority, three
31 times said, that the Medical Society could achieve these same things that they achieved by other means in Washington, D. C., in the Washington, D. C., Medical Society case, could attempt to achieve these things by legitimate persuasion and reasoned argument.

I don't know yet whether counsel in this case are going to repudiate that statement of the Circuit Court of Appeals and claim the Medical Society cannot agree on a course of conduct and then, by legitimate persuasion and a reasoned argument, induce others to follow it.

There might be any one of four reasons why doctors do not take tickets and why they do other things that counsel says they do—anything they do in their daily lives, professional or otherwise.

In the first place, they might do it or fail to do it because of coercion.

In the second place, they might do it or fail to do it because a group of doctors have gotten together and discussed the situation and have entered into an agreement.

Third, they might do it or fail to do it because somebody has induced them, by legimate persuasion and reasoned argument.

And, fourth, they might do it because each doctor has made up his own mind he is going to do that, or fail to do it.

They claim, as I understand, that it is the first, coercion. We claim that it is the last, but we claim that under
32 the American Medical Association case it might have been either the second, the third or the last; but we believe the evidence in this case is going to show it is the last.

They have given us a list, for which we are appreciative, of doctors that they allege, and I quote "have been subjected to specific coercion, compulsion, harassment, threats or pressure" and, as a result thereof, have not been able to practice medicine "on terms of their own choosing."

There are about 200 or more on that list, and when that list is analyzed we find in that first group doctors who, in Multnomah County, between 1936 and 1940, were either expelled or, as counsel claim, they were threatened with expulsion, and the rest of the list, almost without exception, some 175 more or less—maybe 150—are doctors who have either refused to take tickets or written letters to the Industrial or the National or the Prudential Hospital Association, or to employers who had contracts, or to patients, saying that they would not take tickets.

On that list of doctors who have been subjected to specific coercion, compulsion, harassment, threats or pressure are at least four former presidents—presidents between 1936 and the present time—of the State Medical Society.

One of them is a defendant in this case, Dr. Hunt of Eugene, who was not only the leader of the conspiracy to coerce and harass and intimidate and threaten,
'33 but who himself was coerced and harassed. He is that we might call a triple-threat man. He was President of the Society; he was coerced and harassed; and he is a defendant in this case.

And, to complicate the picture further, Dr. Hunt's practice is confined to obstetrics and, up to a year ago at least, as far as we have been able to find out, obstetrics was never covered by any prepaid medical care contract of any kind, and so he has never had occasion to determine whether he should or should not take tickets.

Now I want to review, and I want to say that I do it only because counsel have insisted that this case goes back into the 1936-1940 period.

I want to review. Of course, there are many reasons why doctors refused to take tickets, and I am going to say that most doctors have failed and refused to take tickets because of some particular experience that they have had they do not like. Some of these experiences are experiences which are the necessary and inevitable result of the type of prepaid medical care plans that were in force between 1936 and 1940, and with respect to those there is no criticism whatever of hospital associations except that they were engaged in a line of business that interfered with the doctor-patient relationship.

I am going to point out the difference between the types of questions then and the types of questions now a little later on.

Many times one of these hospital associations would go into a town where doctors were practicing medicine and had their own patients, and, without consulting the doctors at all, would proceed to enter into a contract with the principal employer of the town, selling those doctors' services—selling doctors' services—to the employees of that employer and then, after they had contracted to sell the doctors' services, they would go to a doctor in the town and say, "You can have this contract if you will do it for $1.50 a call, and here is your schedule. We will pay you $10.00 for setting this kind of a fracture." If the doctor complained, they would say, "Well, I can go and get the other doctor to do it. I would rather have you, but I will take the other one."

Many doctors don't like that. They said they would not, under any circumstances, work for a commercial hospital association. Some of them may have unfairly labeled them, all the same, in doing that, I don't know. That is not important in this case.

So they will have evidence of how the hospital associations, one of them particularly, just cut down their fees until they were hardly making a bare living, bidding one doctor against the other.

Now, I want to say this before we proceed, because it is fundamental. Whether we like prepaid medical care or not, we have all got to recognize that there are certain inherent weaknesses, inherent objectionable features, to any system of prepaid medical care, whether it may be by a commercial hospital association, whether it be by doctors sponsored, or whether it be the system that they have in England today.

People generally like to get something for nothing, if they can. If they have paid for something, they feel they have got to have their money's worth. And so we find that in any system—as I say, whatever it is, and it applies to OPS as much as it applies to a commercial hospital association plan—when a person has some kind of an agreement where he is entitled to get all the medical care that he may want or need without further payments, he wants to get his money's worth, and he goes to doctors for things that he never would think of going to doctors for otherwise. And when he goes to doctors, he demands or asks or requests two or three times as much serv-

ice as he would if he had to pay for each item of service. And then, also, I suppose we may assume that among the doctors as well as among other types of people there is a certain percentage of chiselers. I say we may assume that. I can't put it any stronger, because I am representing doctors, you know. But anyway, we proceed on that assumption. The combination of those two factors means that if a hospital association is going to make any money and if a doctor sponsored plan is not going to go bankrupt, there must be a certain amount of supervision of doctors, some interference with the doctor-patient relationship. I would say that if there had not been interference with the doctor-patient relationship to some or a greater extent the hospital associations in the '30s would have absolutely gone broke. Their profits were made on what doctors term chiseling. And so we very often find, in fact, usually find —and particularly the National Hospital Association insisted that before the doctor operated on a patient or gave any extensive type of treatment he had to report the condition to the headquarters of the National Hospital Association, and headquarters had to pass on the question as to whether that treatment should be given. Sometimes the consent was delayed, to the great disadvantage of the patient. That did not happen once; that was their
37 usual procedure. We will expect to have a great deal of evidence as to that. They not only did that, but if some doctor took out the tonsils or the appendix or even made X-rays, without authorization, why, he was rebuked for doing it, and sometimes was not paid. That was not only because of their control over what the doctor should do. They sometimes said, "We have got to investigate to see if he is really covered." That was another objection the doctors then had and now have. A man comes in and he appears to be covered and they render him services, thinking they are working for the Industrial Hospital Association, for instance. And then when they send in their bill they say, "Our investigation shows that this man was not working during such periods of time," or, "This seems to have been a pre-existing situation," or, "This is yellow jaundice, and it is an industrial matter that should be covered by the Industrial Accident Commission," or for some other reason, "We can't pay you." In so far as all the doctors were concerned—and I am talking now about '36 to '40, particularly, and particularly those that did not live too far from Portland—they were nothing more than first aid men. A man would go to a doctor in St. Helens or

in Hillsboro or in Oregon City or the doctor would be called to his home, and then he would give the report to the National or the Industrial—although, this was more in the National than in the Industrial—and they would say, "Send him up to Portland." Or a doctor would ask for a
38 certain type of test to be performed by some specialist. "Send him up to Portland." And that is all the doctor would hear of that patient until later the patient came back and he did not have the reports of the test or anything. They had treated him and taken care of him.

An Oregon City doctor would come to Portland with a man with a broken leg. "We will admit him here, but he can only be treated by such and such a doctor, because he is a National patient." There was even one instance where the patient insisted on being treated by his own doctor. They took him back to St. Helens for that purpose. Bills sent in—fifteen patients last month; $3.00 for this one, $5.00 for this one, $20.00 for this one, and so on. Back from the National would come a letter of remittance listing the patients. Two-thirds of the amounts were marked with little asterisks beside them, and underneath, "Per schedule." Seldom a doctor sent in his bill but what it was cut "Per schedule." And they couldn't get the schedule of fees. And so they continued.

That is why in the great majority of cases that they are going to bring in here, if doctors don't take tickets, that is why they don't take them.

I said a few moments ago that some doctors have specific grievances against one that did not have them against the other. In one case they have taken the deposition of
39 a doctor, and that is a doctor I see on the list of being coerced by threats of pressure from the Oregon State Medical Society, and was one who would not cooperate with these hospital associations. And his testimony, I think, will be the testimony of many others, and that is he had what he considered, and according to the evidence he was justified, a specific grievance against the National Hospital Association, "but I do take tickets from the Industrial and the Prudential, and that grievance dates back to the 20's, and since the 20's I have never taken a ticket unless my secretary made a mistake or something of that kind." There are many like that.

Then there are many doctors, as I have said, who are opposed to any form of prepaid medical care, and many of those who do not take the tickets do it for that reason, the type of doctors that are not on the OPS list or any list, and they won't take them.

And then the doctors say, "If I take a National Hospital check and endorse it, why, they will go around and show that to all the other doctors and say, 'See what these famous specialists think of us? They are working for us.'" That is another reason.

There are many reasons that could be given, but I think counsel will be hard put to find any doctors who are now refusing to take tickets, who by any stretch of the
40 imagination could be said to be doing it on account of coercion or harassment or anything of that kind. I don't think they are going to be able to prove that at all.

Besides, as I say, many doctors do take tickets and checks. Most of the doctors do.

Now, formerly, prior to the late 30's—I am just making that as a broad generalization—the contracts that were entered into by the commercial hospital associations were contracts for medical care as such. "You get sick, and we will tell you what doctor to go to, or your employer will tell you what doctor to go to." And they would have two or three or four in a community that took care of their business, all their business.

In one of the early hearings that we had here I said to your Honor that the change from that system in my opinion was due largely to the increase in labor union activity; that in the early days the question as to whether a contract should be entered into, and to some extent what should be in the contract, was purely a question between the commercial hospital associations and the employer, and that, as time went on, the unions took over that prerogative. That is getting to be a subject matter of collective bargaining. Very often, however, the employer was anxious to do what the men wanted, and so he would let them decide. And I said at that time, that when it
41 was put up to the men one of the things they insisted on was to be able to go to their own family doctor if they got sick, and that was the reason—at least I thought it was, and I still think to a large extent it was the reason for the change in the type of contracts that these hospital associations write. Since I made that statement we have taken the deposition of Mr. Bechtold, and I think perhaps I was over-emphasizing the part that the unions played, because according to his testimony he learned early that that was the kind of contract he would have to write in order to please the public. After all, they are in the business of serving the public and doing what they think the public wants, consistent with making a

profit for themselves. He knew that it was not the union activity, because he had a firm determination in his mind to write that kind of contract before there was any union development in the lumber industry, using that as an illustration.

And for one or both or a combination of those reasons the hospital associations changed from what we call a closed panel to an open panel, from the situation where the employer would tell or the association would tell the member what doctor to go to, and that doctor was working in the real sense of the word for the commercial hospital association; and the open panel system where the member chooses his own physician, and the contract provides
42 that the member will be indemnified for his doctor bills, not beyond the fee schedule of the commercial hospital association. If the doctor charges more, why, then that comes out of the patient's own pocket. It is more in the nature of, and if carried out literally, would be strictly an indemnity contract rather than what we might call a prepaid medical care contract.

So it is that shift-over for which we do not criticise the hospital associations. In fact, we think that that is the one great improvement from the standpoint of public interest that has taken place in these hospital association contracts.

But your Honor can see that when they change from the closed panel to the open panel, as they did in the late 30's and early 40's, thereafter a lot of doctors are going to be presented with hospital tickets that never were presented with hospital tickets before in their lives.

And so there are a lot of doctors, a lot of old-time doctors, since 1940, '41 or '42, that never had a hospital ticket presented to them before, that never had any connection with any of them and never had any desire to work for them, and always desired that they would not do it.

In addition to that, as Mr. Bechtold has testified, and as they have advised the doctors, and as your Honor can readily see, it is not a matter of great importance
43 to a hospital association whether the doctor takes the ticket, sends in the bill to the hospital association and gets paid by the hospital association, or whether he gives a bill to the patient and the patient sends it in to the hospital association and is reimbursed. Their method of doing business equally fits into either of those methods, and it is not a matter of great importance to them. Not at all.

At any rate, there has been no coercion by any medical society with respect to that.

Now, I gather from, not only the complaint, but from the statement which counsel has made, that what they want to prevent—the main object of this suit, so they say—although I will dispute that it is actually the main object of this suit—their contention is that there will be a monopoly of prepaid medical care agreements by the medical societies, and that we should not have a monopoly because monopoly is contrary to the Sherman Act, or something of that kind.

Well, in the first place, this would not be the kind of monopoly that would be contrary to the Sherman Act, where you have all the men who are engaged in this business, if they themselves controlled the sale of their own services. Well, we don't need to linger on that argument for two reasons, the most important of which is this: You know, a page of history is worth a whole volume of logic, and the history that we have had here, the experience that we have had, shows that since the doctors have entered upon a prepaid medical care plan the business of the commercial hospital associations has grown by leaps and bounds.

As I said before, they are now selling three to four times as much as they did before. That phenomenon is well recognized by economists and sociologists and others that have studied public trends, that competition very often doesn't cut down the other man's business, but my making what is sometimes referred to the people, giving them a prepaid medicine conscious complex, or whatever you want to call it—their attention is directed to it. And so if we add to the prepaid medical care plans of the doctors, we will find that—while I don't have the exact figures in my head, I have them in my file—that prepaid medical care is probably now ten times as much in this state as it was before, so that I don't think that the activities of the doctors in carrying on their prepaid medical care plan would ever result in a monopoly even though the doctors desired it.

But, as I said before, there are many many doctors who don't want to eliminate the commercial plans. They want them to continue as a competitive force, because the individual doctor, what he is interested in is the patient and treating the patient. He may be a good friend of the Board of Directors of OPS, but he wants them to have something always to urge them on for more efficient methods, many of them. There are defendants in this case who sincerely believe that it would be a very bad

thing for the OPS and the doctors to elminiate this competition. At any rate, the history shows it will not be eliminated.

Now, I think that I can conclude after this brief survey by saying this: That I think the relationship as will be shown in this case, that by and large the relationship between the doctors of this state and the hospital associations of this state is now more harmonious and cooperative and friendly than it has ever been in the history of this state, notwithstanding this so-called conspiracy. I can say without the fear of contradiction that there are more doctors cooperating with the plans, as counsel put it, today, and there were more one year ago today even when this complaint was filed, than had ever cooperated with them at any time in the history of medicine in this state, and I don't think that anybody who has investigated the facts can possibly deny that, so that in every aspect of it there has been growth and harmony. The course of events, in other words, has gone in exactly the opposite direction than counsel in their complaint say is the inevitable result of this kind of conduct.

The Court: Do you wish to speak again?

Mr. Marcus: No, your Honor.

The Court: During the trial we will run from
46 10:00 to 12:00 and 2:00 till 4:00, with a brief intermission at 11:00 and 3:00, and now we will recess until 2:00 o'clock.

(Noon recess.)

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47 AFTERNOON SESSION

Court reconvened at 2:00 o'clock P.M., Tuesday, October 18, 1949.

Mr. Marcus: May it please the Court, at this time we wish to offer in evidence the documents that have been marked with pre-trial numbers, 1 to 1852.

That offer is made subject to the right of the Government, before the end of the trial, to withdraw from offer such documents as it deems should be withdrawn, and also to the right of the Government to file a statement indicating whether the whole document is put into evidence or certain parts, and the particular purpose for which the document is introduced.

Your Honor, I am told that we are missing from these documents the exhibit that has been marked 991. That is the report of the stockholders meeting of the Jackson County members of Oregon Physicians' Service, dated June 6, 1944. I wonder if I might as Mr. Jaureguy whether he would supply us with a copy of that document. I believe he has it.

Mr. Jaureguy: Minutes of Stockholders Meeting, June 6, 1944? According to my minutes, it is an exact copy of Exhibit 990.

Mr. Marcus: Have you checked it?

Mr. Jaureguy: At any rate, we will supply you with a copy, if we have it, and I am rather certain we do, unless it is a copy of your other exhibit.

48 Mr. Marcus: Thank you.

Your Honor, in a letter dated October 10, 1949, Mr. Jaureguy was kind enough to advise us as to their views with respect to Exhibits 1 to 1106 which at that time, I believe, they had been able to examine.

I should like to have this go into the record.

"With respect to the authenticity and admissibility of the Government's Pre-Trial Exhibits 1 to 1106—"

The Court: You can give that to the Reporter later and he can copy it in.

(The letter referred to is as follows:)

"With respect to the authenticity and admissibility of the Government's Pre-Trial Exhibits 1 to 1106, this letter sets forth the position which we shall take at the trial.

"No objection will be made to the authenticity or admissibility of the letter from Mr. Smith to Mr. Cohen, Exhibit No. 1082, setting forth the circulation of Northwest Medicine at various times, other than that evidence of the circulation of the magazine is incompetent, irrelevant and immaterial.

"In each case that a photostatic copy is offered, it is to be admitted that the photostatic copy is a true copy of the particular sheet photostated.

"In case a photostatic copy purports to be a copy of minutes of proceedings of any defendant, we will admit that the original which was photostated was taken

49 from the minute book of that organization. In cases where two or more pages have been clipped together, we will agree they are consecutive pages unless at the trial with respect to any particular minutes we speci-

fically claim otherwise. Thus far we have found only one such error in the photostats.

"In case any letter contains the signature of a person appearing to have sent it, we will admit the genuineness of the signature, unless we hereafter have reasons in any particular case to challenge the genuineness.

"When minutes or other documents in typewritten form also have other writing upon them, we do not agree to admit that such writing was upon the documents when originally prepared nor even when submitted to you or your representatives. As you undoubtedly know, some of the notations were placed on the documents by members of the FBI.

"Except as above stated with respect to pre-trial exhibit 1082, we reserve the right to object to the admissibility of any document on any ground whatsoever. As to all documents, we shall object on the ground that they are incompetent, irrelevant, and immaterial, as to many, that the matter is hearsay, and there undoubtedly will be other grounds of objections to admissibility. On the other hand, it is possible that with respect to some documents we will not object to their being received in evidence, but we are not in a position at this time to make any such commitment."

The Court: You might summarize to me what it says.

Mr. Marcus: It says, in brief, your Honor, that the defendants will not object to the authenticity of documents which have signatures on them, documents of the defendants, but will object on the ground, I believe, of relevance and on other grounds, I believe, with the exception of one document—

The Court: It doesn't matter. The letter will speak for itself.

Mr. Marcus: Then, your Honor, since receiving that letter a number of other documents have been marked with pre-trial numbers. They have been made available to Mr. Jaureguy. I believe he was out of town part of last week and I believe, therefore, he has looked merely at a number of these documents. However, I would like to know whether there will be the same position taken by the defendants with respect to those documents as with respect to the documents marked 1 to 1106.

Mr. Jaureguy: I can only answer now as to documents I have examined, which I think go to No. 1250 or something

like that. Our position will be the same when the documents are admitted.

The Court: I think I can shorten all this by saying that the documents referred to by Mr. Marcus are admitted at this time provisionally, subject to such objections as have been, will now or hereafter be stated; by that I mean prior to the conclusion of the trial; and, subject also to Mr. Marcus' right to withdraw any of them in whole or in
51 part prior to the conclusion of the trial.

Mr. Jaureguy: I would like to make this statement. I prefer not to make the objections now because Mr. Marcus has reserved the right to withdraw documents. I would not like to say that I will object to this or that document and then have it withdrawn. I have had that done before in trials; and, also, until I know just what part of each document he wants to admit. It would simplify matters, I think.

The Court: It will clear itself up, I know, from long experience.

(Thereupon documents heretofore marked Plaintiff's Pre-Trial Exhibit No. 1 to Exhibit No. 1852 were thereupon received in evidence as Plaintiff's Exhibits No. 1 to No. 1852.)

Mr. Marcus: We should like to file with the papers on record in this case a statement of the items called for in the orders to produce which have not been produced. With your Honor's permission, I would like to file this with the Reporter.

The Court: Have you a copy of it, Mr. Jaureguy?

Mr. Jaureguy: If he says it is the same letter, I merely want to say I do not agree with that statement. Sometimes he says they have not been produced and we tell him he had gotten them another one of our clients, various things, and many of them have not been produced.

52 The Court: It may be filed.

(The following paragraphs under the Plaintiff's Motion for Discovery and Production of Documents under Rule 34 filed May 3, 1949, have not been complied with:

5 (part)	29	65	78	91
8	30	66	79	92
9	34	67	80	93
10	35	68	81	94
11 (part)	36	69	82	97
12	37	70	83	98

14	41	71	84	106
15	42	72	85	107
21	43	73	86	110 (part)
22	45	74	87	112
23	50	75	88	113
24	52	76	89	115
26 (part)	58	77	90	116

(The following paragraphs have not been complied with under the Court Order to Produce Documents filed June 10, 1949:

1	6	11	21
3	7	17	23
4	9	19	24
5	10 (part)	20	25
			26)

Mr. Marcus: Your Honor, at this time I should like to offer certain answers to interrogatories which the defendants have filed in this court.

I suggest, your Honor, that this might be done by my indicating the particular paragraph; and that those paragraphs will relate to the copies of interrogatories which have already been filed in this court.

The Court: I think you can do that after we ad-
53 journ, at 4:00 o'clock. State it in the record at that time.

Mr. Marcus: Very well. I had intended, your Honor, at this time to put in evidence certain depositions, but if your Honor thinks that a similar arrangement may be made as to them, I will do that.

One other thing. We do regard ourselves as handicapped by our motion filed in August with respect to inspection or subpoenas to obtain documents not being granted, and, for the sake of the record, we would like to renew that motion at this time.

The Court: Decision reserved.

Mr. Marcus: We would like to call as our first witness Dr. Moore.

Dr. Chester C. Moore was thereupon produced as a witness on behalf of Plaintiff and was examined and testified as follows:

The Clerk: Would you state your full name, please.

The Witness: Dr. Chester C. Moore.

(The witness was thereupon duly sworn.)

Direct Examination

By Mr. Marcus:

Q. Dr. Moore, when were you admitted to medical practice? A. I graduated in 1904 and was admitted to practice in the State of Oregon in 1905, as I remember.

54 Q. Are you admitted to practice in any other State? A. The State of Washington. That was probably early in 1906 or may have been late 1905.

Q. What honorary medical societies, if any, are you a member of? A. The only one now, since I resigned from the Multnomah Society, the only other honorary—I am a Fellow of the American College of Surgeons.

The Court: Do you gentlemen want your clients or representatives of your clients to sit with you?

Mr. Jaureguy: During the course of the trial, yes, if there is no objection, we will, sometimes one and sometimes another.

Mr. Marcus:

Q. Have you been practicing medicine since around 1905 and 1906? A. Yes, I have been practicing medicine since 1905.

Q. You are connected with the Industrial Hospital Association, are you not? A. I am President of the Industrial Hospital Association and Medical Director.

Q. How long have you held that position? A. Since its organization.

Q. About when was that? A. I think it was 1923.

Q. Do you have a general manager for the associ-
55 ation? A. Yes, sir.

Q. What is his name? A. When we first organized, the manager and secretary was Mr. Stone. He was only with us, not very long—a few months, and then the general manager became Mr. Will T. Kirk—he became the general manager and secretary. Later on, after his death, we changed again.

Q. Could you state the approximate time during which Mr. Kirk was manager? A. From about 1924 up to the date of his death, which was about two years ago.

Q. Where is the Association's home office, Doctor? A. In the Medical Arts Building, Portland, Oregon.

Q. Has that been true for the years 1936 and since that time? A. It was not originally started there. It was origi-

nally was in the Kirkpatrick Building, I believe, and then, very shortly afterwards, moved into the Medical Arts Building.

Q. Can you tell us something about the nature of the business of the Industrial Hospital Association? A. It was conceived with the idea of furnishing a prepaid form of insurance to those of the companies that we started at that time to take over. At that time it was ostensibly created for the purpose of dealing with lumber companies, mostly.

Q. Do you know who were the stockholders and
56 officers of the Association in 1935? A. The stock was owned by four people. I owned 25 per cent and Mr. Kirk had 25 per cent, Dr. Pilkington of Astoria had 25 per cent, and Dr. VanDusen of Astoria had 25 per cent.

Q. Was Mr. Kirk the only layman among that group? A. He was the only layman in the organization, yes, and the only layman who owned any stock.

Q. Were the other doctors active in the affairs of the Association? A. Yes.

Q. Where were they located? A. In Astoria.

Q. And you were in Portland? A. I was in Portland.

Q. Does the Association have members resident in other states? A. Yes.

Q. Does the word "members" to you mean those under the Associations' contract? A. Were they under contract?

Q. When I use the term "member" you understand I am referring to those under contract? A. Yes. You say that they were members of the Association?

Q. Yes. A. They were.

Q. Would you say that was true in 1936 and since that time? A. Yes.

57 Q. In carrying out the Association's business, is it necessary to correspond with such members? A. Yes, it is necessary to keep in contact with all of them.

Q. And with doctors outside the state? A. And with doctors outside the state who attend these people outside the state.

Q. And with hospitals outside the state? A. Occasionally with hospitals, yes.

Q. And with medical equipment and supply companies outside the state? A. Yes.

Q. Does the Association buy medical supplies and equipment from suppliers which are outside the state? A. Yes.

Q. Is your answer to these questions the same for the period 1936 until the date of the complaint, as of the date

of the complaint? A. I think the answer to all of them as stated affirmatively would be just as true today as it was then.

Q. Would you say such correspondence is of regular occurrence? A. Is the correspondence of regular occurrence? Yes, almost daily.

Q. Have members from outside the state at any time since 1936 come to you or the Association for consultation or treatment? A. Have patients?

58 Q. Members. A. Members, yes.

Q. Has it been the custom of the Association to hold business conferences at which salesmen, its salesmen, have been present? A. Yes.

Q. Perhaps I should ask you whether or not the Association has salesmen? A. Yes, we have a number of men who travel over the State of Oregon and Washington.

Q. And that has been true since 1936— A. —and take care of business as occasion arises, to look after the affairs wherever we are doing business.

Q. And that has been true since 1936? A. That was true then and is still true.

Q. At such conferences have complaints and difficulties arising from non-cooperation of doctors been discussed? A. It was not at the inception of the organization, but it has been many times since.

Q. Would say that is true since 1936? A. Yes.

Q. Prior to 1936 were you a member of any medical society? A. A member of the Multnomah City and County Medical Society, yes.

Q. Doctor, are you familiar with a publication

59 known as the Medical Reporter? A. Medical Reporter?

Q. Yes. A. Yes, there used to be a little pamphlet sent around to us, to members, that we would receive from the Society.

60 Q. Doctor, prior to 1936 had you attended scientific and other meetings of the Multnomah County Society? A. I have.

Q. Prior to 1936, Doctor, had you ever, to your knowledge, been charged with violating medical ethics? A. Never to my knowledge.

Q. Did the Multnomah County Medical Society make an investigation of the association's affairs in 1935? A. I believe it started in 1935 or thereabouts.

Q. Doctor, I show you Exhibit 215 and ask you to look at the bottom of page 50 of that exhibit. I direct your atten-

tion particularly, Doctor, to the portion of that document—
A. I don't quite get you. I am a little bit hard of hearing; can I move up there?

The Court: You show him on the document what you mean.

Mr. Marcus:

Q. I direct your attention to the statement which appears on this page, "General questions for directing head of Association," and ask whether that would be you. A. Be mine?

Q. Would the directing head be yourself? Were you the directing head at that time?

The Court: You had better tell him what the document is, if he is not advised.

Mr. Marcus:

Q. The only question, Doctor, is whether when it is stated there, "General questions for directing head
61 of the association," you are referred to, whether it is your understanding that you are referred to. A. Let me read the balance.

The Court: Tell him what the document is Mr. Marcus.
The Witness: I don't know what document this is.
The Court: Yes. Tell him what it is.
Mr. Marcus: That document purports to be a statistical study of the Industrial Hospital Association.
The Court: Who got it up?
Mr. Marcus: The committee on Study of Medical Care for Low Income Groups, Multnomah County Medical Society.

A. If this was a report of my organization, and then it said, "General questions for directing head of the association"—

The Court: Were you directing head of your association at that time?

A. I was the directing head of it, yes.

The Court: In fact, you always have been?

A. Always have been.

Mr. Marcus:

Q. Doctor, what was your attitude toward that investi-

gation? A. That is the investigation, may I ask, that Mr. Couch represented the Medical Society?

Q. Did you cooperate in that investigation or not? A. If that is the report of the investigation that was made by Mr. Couch, he came to our office and said that he was
62 asked by the Medical Society to investigate hospital associations, and asked for what attitude I would assume, and I said, "I would cooperate with you in any way. You can go into my office and I will give you carte blanche entrance to my office without any restrictions whatsoever. You can ask any questions or you can go into any book or any record that is in my office." And he spent, oh, a number of days in my office, reviewed everything in the office. And this is the first time that I have ever seen that report, if that is the report.

Q. Doctor, I show you a document marked Pre-Trial Exhibit 875 and ask whether this is a notice you received from the Multnomah County Medical Society. A. Yes, I received this from the Multnomah County Medical Society, signed by Charles E. Sears, Chairman of the Board of Censors.

Q. What does that notice purport to be? A. May I read the thing?

Q. Would you read the first paragraph, please, out loud? A. "The Multnomah County Medical Society has received information which appears to indicate that the contract practice engaged in by you in connection with the Industrial Hospital Association is conducted in such a manner which is in violation of the principles of medical ethics of the American Medical Association."

Q. And then it asks you to appear? A. It asks
63 me to appear.

Q. Do you recall whether at that time you had occasion to request a postponement? A. At one time I wrote, I believe, to Dr. Sears—something came up that prevented me from attending the meeting, and I asked if he would postpone it for a few days.

Q. Is this the reply you received? A. Yes.

Q. The document I have just shown you is marked Pre-Trial Exhibit 877. Doctor, when you received this notice, was that a matter which was taken up by the officers of the Industrial Hospital Association? A. These matters concerning my being called were all taken up and discussed by members—by the directors of the organization.

Q. Doctor, I show you a document marked Pre-Trial Exhibit 1657, which purports to be the minutes of a special meeting of stockholders of the Industrial Hospital Association on the 7th day of November, 1936, and ask whether these are the minutes of the association held on that day. A. Yes, this is a copy of the minutes.

Q. Doctor, as the result of receiving that notice did you appear before the Board of Censors? A. I did.

Q. Do you recall what doctors or what members
64 were present at that meeting?

The Court: Just tell him what the minutes show. That will shorten it. You have got a minute that shows that, haven't you? I doubt if he can remember.

A. I remember that Dr. Sears was one.

The Court: He will tell you.

The Witness: And one of the Adams. Not the present Dr. Adams, but his brother who died.

Mr. Marcus:

Q. Doctor, I show you a document marked Pre-Trial Exhibit 880 and ask you to look at the first paragraph and state whether, to the best of your recollection, those persons listed were present at that meeting? A. Those men, as nearly as I can remember, were mostly all present.

Q. Doctor, the document I have just shown you is dated December 15, 1936. I have here a document marked Pre-Trial Exhibit 878 which purports to be a letter sent to you under date of December 11, 1936, from the Chairman of the Board of Censors, and ask you whether you received this document. A. Yes.

Q. Would you kindly read that document, Doctor? A. The top line, sent from the Multnomah County Medical Society, December 11, 1936. Dr. Moore, Medical Arts Building.

"Dear Dr. Moore: At a meeting of the Board of Censors
of the Multnomah County Medical Society held on
65 December 11, 1936, the Board passed the following
resolution in regard to the charges filed against you by the Grievance Committee.

"It is the sense and conclusion of the Board of Censors and the Board recommends to the Council that:

"(1) The charges filed by the Grievance Committee against Dr. Moore have been sustained.

"(2) Dr. Moore be expelled from the Society.

"(3) A copy of this resolution be transmitted to the Council."

"This conclusion was reached only after the most mature deliberation. Throughout the discussion of this matter with you the Board has appreciated your frankness and spirit of cooperation, but the evidence presented left the Board no alternative.

"The above resolution and recommendation will be forthwith presented to the Council for its consideration.

"Yours very truly, Multnomah County Medical Society, by Charles E. Sears, Chairman."

Mr. Marcus:

Q. Doctor, I think a little confusion was caused, probably by me, with respect to the last two documents. This document marked Pre-Trial Exhibit 880 purports to be the minutes of the Council of the Multnomah County Medical Society. Before you went before the Council you had a hearing before the Board of Censors. Is that not so? A. Yes; I had several hearings before them.

66

Q. Can you tell the Court who was present at the hearing of the Board of Censors? A. Of the Board of Censors? I can't remember—

The Court: Don't you have a document that shows that?

Mr. Marcus: No, I don't, your Honor.

A. I can't remember, but I remember that Dr. Sears and one of the Dr. Adams were there. His first name I don't know.

The Court: Dr. Richard Adams, Dr. Moore.

A. Dr. Richard Adams.

The Court: That is correct, isn't it?

A. That is the younger one that passed away. Dr. Sears, Dr. Martzloff, and I think Dr. Gambee was on the Board, N. E. Gambee.

The Court: E. E.?

A. Yes. That is as much as I can remember positively.

The Court: That is pretty good after all these years.

The Witness: If you had that happen to you, you would have a pretty good memory.

Mr. Marcus:

Q. Doctor, do you recall whether a reporter was present and a transcript made of the hearing? A. There was always—I won't say always; I don't know whether the first one, but most of the time when I was there giving
67 testimony before them they had a court reporter there.

Q. Did you ever receive a copy of the transcript? A. I never did.

Mr. Marcus: I would like the record to show at this time that the Government's motion filed in August asked for transcripts of disciplinary proceedings.

The Court: Do you have that transcript? I have seen several of them here among the exhibits.

Mr. Jaureguy: Yes, we have the transcript. I would like the record to show we have never been asked for it.

The Court: You bring it in, will you? He wants it, apparently.

Mr. Jaureguy: Tomorrow?

The Court: Yes.

Mr. Jaureguy: Very well.

Mr. Marcus:

Q. Doctor, I show you again Pre-Trial Exhibit 880, which purports to be the minutes of a special meeting of the Council of the Multnomah County Medical Society, December 15, 1936, and ask you to look at the second paragraph on the second page. A. The second paragraph—Which one are you referring to, this one? Yes.

Q. That purports to record what occurred at the hearing when you were present, does it not?

68 Mr. Jaureguy: I want to object to that method of attempting to refresh the witness' memory. This was not made under his direction.

The Witness: I will read it, and then I can answer your question.

The Court: That is right, read it.

The Witness: "Dr. Chester Moore appeared at the meeting and requested a postponement of the consideration of the conclusions and recommendations of the Board of Censors concerning the charges filed against him based upon

certain alleged acts and practices contrary to the principles of medical ethics, for the reason that a change in the personnel of the Council might be made at the annual meeting on December 16th. Following considerable discussion, upon motion duly made and seconded, it was voted that the conclusions and recommendations of the Board of Censore concerning the charges filed against Dr. Chester C. Moore be considered at the present meeting. Dr. Moore then read a letter of resignation as a member of the Society and left the meeting."

Mr. Marcus:

Q. Doctor, did anything else occur, to your recollection, at that meeting? A. Well, I can describe the meeting.

Q. Would you, please. A. Yes, I appeared at the
69 meeting, and when I entered they then told me—
I asked them what report had been made by the Board of Censors.

Mr. Jaureguy: I want to object to the conversation that was taking place at that meeting on the ground that it is hearsay and incompetent, irrelevant and immaterial.

The Court: Overruled.

A. They stated that the meeting had approved—the meeting held that I was unethical, and I then asked the Chairman, who was Dr. Adams—I then asked him, did this Council sitting here accept the report that the Grievance Committee had made that I was unethical, and he said yes. I then said to him, "If the Council has already accepted this report that I am unethical, then I do not wish to go any further, and I have my resignation here." I then asked them whether I should hand it to them or read it, and the Chairman said for me to read it, and I did so. Following the reading of it Dr. Adams arose and started to talk upon this subject before us, and I said, "There is no use of talking now. It is too late. If you were going to talk with me about anything, you should have done so before your Council accepted this report." And then I read my resignation. Following the reading of my resignation—no, this conversation took place after I read my resignation. And then Dr. Adams said, "Well, now, Dr.
Moore, may I just ask one favor of you. Can we
70 ask you now to keep this out of the press?" And I
said, "Jack, you have got a hell of a lot of nerve, after the way you have treated me, to ask me any professional favors. Good-bye." And I walked out.

The Court: That sounds like you, Doctor.

71 Mr. Marcus:

Q. Doctor, I show you Exhibit 879 and ask you whether this is the letter of resignation that you addressed to the Council at that time. A. Yes.

Q. And did you receive this acceptance of your resignation? A. Yes, I did.

The Court: What number is that?

Mr. Marcus: The last document shown to the witness is marked 881.

Q. I show you document marked 1658 which purports to be the minutes of a special meeting of the Board of Directors of the Industrial Hospital Association on December 23, 1936, and ask you, Doctor, whether this records further action taken by the Association as a result of your difficulties with the Society? A. If this—it is all here but my signature on the bottom—but it is a copy of the minutes of our Board of Director meeting.

Q. Doctor, after you resigned from the Multnomah County Medical Society did you have occasion again to take up the matter of the position the Society was taking with respect to the Industrial Hospital Association? A. I continued to do the same as I did before I resigned, and I continued to work to see if I could not get the approval of organized medicine for my organization.

Q. Doctor, I show you document marked 1754 and ask whether this is a copy of a letter you sent to the
72 Council of the Multnomah County Medical Society. A. Yes.

Q. And what does that purport to be? A. It is going to be difficult for me to read it, but I will try to.

The Court: Well, don't read it.

Mr. Marcus:

Q. Just briefly, what was the substance of that letter?

Mr. Jaureguy: I object, that the letter is the best evidence of what he wrote them.

A. Well, this is where I appealed to the Multnomah County Medical Society to see if I could not have their approval for my organization, and I went over the book, their book on ethics, and the statements that I had received from them that they considered would be approved, and these are taking up the different articles and stating where I would

desire and would make every attempt to conform to those principles.

Mr. Marcus:

Q. Well, I see. What is the date of that letter? A. The date is December 8, 1937.

Q. Doctor, I show you document marked 883 and ask whether this is the reply you received to that letter. A. Yes.

Mr. Marcus: I should like the record to show that
73 this reply is dated January 12, 1938, and states—

Mr. Jaureguy: I object to that. The letter itself states what it is.

Mr. Marcus: I am merely reading from the letter.

Mr. Jaureguy: The same objection.

Mr. Marcus: I merely want to read—

The Court: That would make a one-sided record here—I mean make an argumentative record.

Mr. Marcus: Well, the document will speak for itself, your Honor.

The Court: If you want to, unless there is objection from the other side, you can have these letters incorporated in full in the record at these particular places. That, however, adds a very great burden in both expense and volume.

Mr. Marcus: No, your Honor. Only from time to time will I care for that.

The Court: It is best if anything is put in to put the whole thing in.

Mr. Marcus:

Q. Doctor, I show you document marked 885 which states at the top "Basic Elements to be Considered to Determine Eligibility of a Plan for Providing Medical Care to Low-Wage Industrial Groups."

Mr. Jaureguy: What is that number, please?

Mr. Marcus: 885.

Q. (Continuing)—and ask if that is the— A.
74 That was sent out by the Medical Society, as I think, to all of their membership—but I had a copy of it myself. Whether I received it directly from them or not I do not know.

Q. Doctor, during this period did you have occasion to take up these matters with your associate, Dr. Pilkington? A. All these matters were discussed with my directors al-

most continuously during the period of my difficulties with the Medical Society.

Q. Doctor, is this document marked Pre-Trial 884 a letter you wrote to Dr. Pilkington dated January 5, 1939? A. Yes.

Q. Doctor, about this time did you have occasion to discuss this matter of the Society's attitude toward the Association with officers of the Society?

The Court: Do you have something to refresh his recollection?

A. You mean did I have occasion—

Mr. Marcus:

Q. Would you look at this document, 884, and see whether it refreshes your recollection. I call your attention particularly— A. I will read this here—let's see, "I am"—I had several—this is before I was expelled from the Society. Before I was expelled from the Society I had several meetings with members of the Society. I had one meeting with Dr. Henton and Dr. John Besson and Dr. John Bueermann. These were luncheon meetings. We met, I think, at luncheons, and we discussed—they wanted
75 to take up with me certain problems, and I discussed with them certain matters concerning my organization in prepaid medicine.

Q. Do you recall what particular matters, if any, were discussed at those luncheons?

Mr. Jaureguy: I think that is hearsay and not binding on any of the defendants.

A. Dr. Sears, I would like to place in that category.

The Court: Overruled.

A. Dr. Sears had a couple of meetings with me, and he was trying to point out to me my unethical position, not particularly stating it was unethical but he wanted to show me my position, that I wasn't cooperating with the Medical Society and that I was doing harm to the profession, my organization was. And he gave his many reasons, and we talked over the matter pretty thoroughly.

The meetings with Dr. Henton and Doctor—they were more or less on a different tack. Dr. Henton was of the opinion that I should give up my contracts, that I should turn these contracts over and let them go to the Medical Society. And then he had a meeting, another meeting,

where—whether all three were present at that time I am not positive, but I think all three were present, Dr. Henton, Dr. John Besson and Dr. Bueermann—now, whether Dr. Bueermann was there, positively I can't answer—but their general argument to me was along the line that I should dispense with the contract practice as I had it organ-
76 ized and should cooperate with them, and their intimation was that I should give the contracts over to an organization that was organized by the Medical Society.

Mr. Marcus:

Q. Well, Doctor, I call your attention to the date of that letter and ask whether that refreshes your recollection as to the approximate time of these conversations. A. This is January 5, 1939, and this is a letter I wrote to one of my directors in Astoria particularly along the lines that I have just stated.

Q. Well, does that refresh your recollection as to the approximate time? A. And expresses my sentiment as I had it and my feelings at that time.

Q. Well, Doctor, would you please listen to this question: Does that refresh your recollection as to the approximate time when you had these conversations with Drs. Henton, Besson, and possibly— A. It all occurred just prior to this letter because the letter states here the fact that I have just held these meetings with these doctors.

Q. Doctor, during this period— A. May I see that date again? Yes.

Q. Doctor, during this period what efforts, if any, did the Association make to conform to what it considered the Society desired?

Mr. Jauregui: I am going to object to that. If he
77 was not a member of the Association he would clearly only know it by hearsay and in no way was it binding upon the defendants.

The Court: Overruled.

A. After I resigned I did not stop trying to get the approval of the Medical Society for the organizations that I represented, because Dr. Pilkington and Dr. Van-Dusen were still members of the State—of the Clatsop County organization. They were still my directors, and I continued to make an effort to get the approval of the Society for my organization.

Mr. Marcus:

Q. Well, Doctor, was any change made with respect to those who held stock in the Association as a result of the position taken by the Medical Society? A. The Medical Society, one of the points they brought up before me on my charges was that it was a lay organization, and I did have a lay stockholder. From the very beginning we gave one-quarter of the stock to the General Manager and Secretary. And when these charges came up I went to Mr. Kirk, who owned 25 per cent of the stock, and asked Mr. Kirk to turn his stock back to us, let us have that stock so there would be no lay ownership in the organization. I had rather a difficult time in getting him to give a fair consideration. He figured his value above what we thought it might be worth because we were on a hot spot in the organization and I felt that he wasn't justified in the amount he wanted, but we finally settled upon a basis of book value,
and the consideration that I gave him for allowing
78 us to have it at book value was that I told him I
would make no written agreements, but as long as I like I would pay him a salary commensurate with what he was entitled to in managing a successful organization.

Q. Did Mr. Kirk then cease? A. And he then upon those terms turned his stock over, and I believe the Society, I mean the corporation, bought his stock.

Q. Doctor, was this change in stockholding to your knowledge brought to the attention of the Multnomah County Medical Society? A. Yes, it was.

The Court: Mr. Marcus, we will take the afternoon recess.

(Short recess.)

79 Direct Examination (Continued)

Mr. Marcus:

Q. Doctor, I show you a document pre-trial marked 1852, and show you a part of that exhibit dated July 10, 1939, which purports to be a letter from you to the Multnomah County Medical Society, and ask whether that is a letter you wrote.

The Court: That is all admitted. That is what authenticity means.

Mr. Marcus: Yes, but, your Honor—

A. Yes, I wrote this letter.

The Court: Tell him it is a letter he wrote. Don't ask him. We know it is. You have looked at it since he has.

Mr. Marcus:

Q. I show you the last two pages of Exhibit marked 1852 and ask you whether this is a statement of principles and policies received by you from the Multnomah County Medical Society?

Mr. Jaureguy: I object to that on the ground that the letter is the best evidence. He is just looking at the letter and summarizing what it is, I have no doubt he is capable of doing it, but it is not admissible.

The Court: We will get in the groove in a day or two.

A. Shall I answer it?

Mr. Jaureguy: I am trying to help get into it.

Mr. Marcus:

Q. Is your answer Yes or No? A. This letter was written to the Industrial Hospital Association and signed
80 by Roy Payne, Chairman of the Committee from the Multnomah County Medical Society.

Q. Was it brought to your attention? A. It was.

Mr. Marcus: Your Honor, I should like to read the first two paragraphs of this letter, because they do have particular significance.

The Court: You want to read them to me?

Mr. Marcus: Yes.

The Court: Okeh.

Mr. Marcus: "As you probably know—"

Mr. Jaureguy: I want my objection put in the record as to reading a part of a document like that.

The Court: Go ahead.

Mr. Marcus: "As you probably know, the Oregon State Medical Society has adopted a policy and program in regard to the furnishing of prepaid medical care to low-income industrial workers. The principles underlying this policy and program are two-fold:

"1. Such plans shall be local in their character, depending on the conditions existing in a given county or district, and such as meet with the approval of the local medical society—"

The Court: Mr. Jaureguy, we will establish the procedure as we go along. Do you want all of this letter put in at this place?

Mr. Jaureguy: No, I don't want it all put in the
81 record. My objection is the other way around. I object to reading portions of that into the record. I may have read that letter. I don't think I have.

The Court: Listen. Do you want it all put in the record, that is, from the beginning?

Mr. Jaureguy: No, I want none of it put in the record.

The Court: Your objection is untenable because as the case goes along I will expect both of you to call to my attention things in the exhibits which you think are important to you. I am seeking simply to make the record from your point of view.

Mr. Jaureguy: I appreciate that, your Honor.

The Court: Yes.

Mr. Jaureguy: But I have not read the letter, so I don't know whether I want the rest of it in or not. I assume you don't want me to stop now and read the letter.

The Court: No. At the end of the case I expect you people to develop on both sides for me, by this sort of thing, whatever you think is of factual importance. I expect to learn from you people as I go along; just as Mr. Marcus now has thought I should have that brought to my attention.

Mr. Jaureguy: My objection is not in his calling it to your Honor's attention. My objection is having this argumentative stuff in there by putting in just a portion.

The Court: Mr. Reporter, whenever a part of a document is read to me, put the whole document in at
82 that place, read by either side.

Mr. Marcus: I will give the Reporter the entire document, your Honor.

(The last two pages of Exhibit 1852 are as follows:)

"MULTNOMAH COUNTY MEDICAL SOCIETY
Portland, Oregon
Office of the Secretary

June 24, 1939

"Industrial Hospital Association
Medical Arts Building
Portland, Oregon

"Gentlemen:

"As you probably know, the Oregon State Medical Society has adopted a policy and program in regard to the furnishing of prepaid medical care to low-income industrial work-

ers. The principles underlying this policy and program are two-fold:

"1. Such plans shall be local in their character, depending on the conditions existing in a given county or district, and such as meet with the approval of the local medical society;

"2. The plans shall be formulated and carried out in the best interest of the public, the patients and the profession, and according to the fundamental ethics of the profession.

"A committee of the Mulnomah County Medical Society has been working on such a plan for this county.
83 After considerable work, the committee reported that it felt that the most feasible approach to a solution of the problem was the effect the reorganization of one or more agencies now contracting for such care in Multnomah County in such a manner as might be approved by the Society.

"The Multnomah Medical Service Bureau (formerly the Multnomah Industrial Health Association) applied to the Society to be an approved agency to administer such a plan in this county, based upon carrying out certain changes in its corporate structure and practices. The committee studying this problem recommended to the council of the Society that the Bureau be approved as an agency to provide medical care to low-wage industrial groups in Multnomah County, subject to the fulfillment of certain conditions. The Council of the Society subsequently adopted the report of the committee.

"At the same time, the Council approved another report of the committee which recommended:

"1. That a committee of the Council be set up to keep in contact with all plans of prepaid medical care in Multnomah County, and serve as an advisory committee to the Council in connection with problems relating to prepaid medical care;

"2. That this committee contact organizations other than the Multnomah Medical Service Bureau now engaged in contracting for medical and related services to low-wage industrial groups in Multnomah County, for the purpose of giving them the opportunity to apply to become an
84 approved agency to administer such a plan in this county.

"The undersigned were elected as such a committee. This committee would be glad to receive from your organization a plan, consistent with the policy and program of the

Oregon State Medical Society and the Principles of Medical Ethics, whereby you might apply to become an approved agency to administer such a plan in this county.

"Very sincerely yours,

MULTNOMAH COUNTY MEDICAL SOCIETY
by Committee on Plans of Medical
Care for Low-Wage Industrial
Groups

Signed Roy A. Payne, Chairman
N. W. Jones
Dean B. Seabrook"

Mr. Marcus:

Q. I show you Exhibit 888, which is a letter dated March 13, 1940, to the Board of Censors. This particular photostat does not have a signature on it. I will ask you whether it is a letter sent by you to the Board of Censors?

The Court: How will he know without the signature? Did you get it from his files?

Mr. Marcus: Yes.

The Court: He says he got it from your files, Dr. Moore.

A. Yes, I can tell. Yes, I wrote this letter.

Mr. Jaureguy: Could I see that?

85 Mr. Marcus: Yes.

Q. Doctor, I show you Exhibit 889, which purports to be a letter written by the defendant, Dr. Charles E. Hunt, to Dr. Pilkington, under date of May 4, 1940, and ask you whether Dr. Pilkington showed you this letter? A. I have a copy of this letter in my records, in my office.

Mr. Marcus: Your Honor, there are two paragraphs in this letter I should like to read to your Honor, to call to your Honor's attention.

Mr. Jaureguy: I have the same objection that I made before. I would like to have the same objection entered.

Mr. Marcus: "As you know according to our adopted policies, there is to be but one approved Medical Service Bureau in a county or district and all the doctors in that locality who care to serve are to be members. This local bureau must first have the approval of the local county society before the State Society can approve it.

"It seems to me the greatest hurdle to overcome is the fact that you are operating statewide and in competition

to approved local bureaus. This is a thing we are trying to overcome. The fact that your organization is a physician owned gives free choice of physician and pays good fees are all steps in the right direction, but it seems to me that the Society cannot approve competing organizations throughout the state even if they are physician owned."

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86 (Plaintiff's Exhibit No. 889 is as follows:)

"May 4, 1940

"Robert J. Pilkington, M.D.
Astoria, Oregon

"Dear Doctor Pilkington:

"I have been trying to get time to write you ever since the last meeting of the Council but I have been out of town and terribly busy.

"The next meeting of the Executive Committee of the Bureau of Medical Economics will be held at 3:00 P.M. at the Mallory Hotel on Saturday, May 11th, for the purpose of going over the problems with you and Dr. VanDusen, as voted by the last meeting of the Council. I would like to know at your earliest convenience if you and Dr. VanDusen will be present.

"I think it is best to not have Dr. Moore present as I believe this will not help the cause any. I do not expect Dr. Martzloff to be present at the 3:00 P.M. meeting as he is not a member of the Executive Committee of the Bureau, although he is a member of the Executive Committee of the Council.

"I am very sorry for what happened at the last meeting but it was beyond my control. I did not know in the first place that Dr. Moore was coming in and I did not know anything about the trouble Dr. Martzloff had had with him. I surely did not know that Dr. Martzloff was going to say the things he did. It certainly made it impossible for us to accomplish anything at that particular meeting.

87 "I would suggest that you and Dr. VanDusen go over all the recent pronouncements and policies of the State Society which you have received and which have been published the last few months in the Oregon Section of Northwest Medicine. In other words, familiarize yourselves with the actions of the Council to date.

"If you will come into the committee meeting with a plan which you think might be acceptable to the Council

or bring us a statement of your policies, we will have something as a basis for discussion.

"As you know according to our adopted policies, there is to be but one approved Medical Service Bureau in a county or district and all the doctors in that locality who care to serve are to be members. This local bureau must first have the approval of the local county society before the State Society can approve it.

"It seems to me the greatest hurdle to overcome is the fact that you are operating statewide and in competition to approved local bureaus. This is a thing we are trying to overcome. The fact that your organization is physician owned, gives free choice of physician and pays good fees are all steps in the right direction, but it seems to me that the Society cannot approve competing organizations throughout the state even if they are physician
88 owned.

"I will not attempt further to discuss this subject now but will grant you and Dr. VanDusen a courteous audience on the 11th, at which time a very small group of us can sit down and discuss these matters freely. I hope that a great deal of good may come out of it, that you both may be able to be present, and I am indeed sorry for the bad start which was made at the last Council meeting.

"Please let me know by return mail if possible if you will be present at the meeting so that we may get out the announcements sometime in the very near future.

"Cordially yours,

(Signed) Charles E. Hunt, M.D.

"CEH:S

CC. Dr. Arthur Van Dusen"

Mr. Marcus:

Q. Doctor, referring again to Exhibit 1852, the first five pages of that exhibit purport to be a letter written to you, written by Tom Coberth. The address on the top is "Jasper Park Lodge" in Canada.

I would ask you first whether you received this letter? A. Yes, I did.

Q. Would you tell the Court whether Dr. Coberth was a doctor practicing in Oregon or in Canada? A. He was practicing at The Dalles and I think he was at that
89 time President of the Oregon State Medical Association.

Q. Doctor, referring again to Exhibit 1832, I call your attention to that part of the document which purports to be a letter dated September 6, 1939, to Dr. Pilkington. It does not contain a signature, but on the lower left-hand corner are the initials "W.T.K." Are you familiar with those initials? A. This is a dictated letter from the Industrial Hospital Association, addressed to Dr. Pilkington, from our General Manager and Secretary, Will T. Kirk.

Q. This letter refers to "Doctors' Cooperative Plan." Are you familiar with that plan? A. Only somewhat; in detail.

Q. Could you tell us what you know about that? A. We were trying to develop a different plan of cooperation amongst the doctors throughout the state which we thought might conform better to the medical principles of the Medical Association and also was a fairer deal for those in different counties as to remuneration for services they rendered, and it was based very largely on a cooperative basis, so that the average doctor was paid his fees for the work he did and if there was a balance left over, then the physicians in that country were to participate in the profits that were left over or earned by the organization.

Q. Is Dr. Pilkington still living? A. No, Dr. Pilkington died a few years ago.

Q. Have you ever been reinstated in the local medical Society? A. I have not.

90 Q. Have you ever been invited to be reinstated? A. I have one letter in reply to a letter I wrote to them which stated that if I wished to have consideration to the matters contained in the letter—

Mr. Jaureguy: Just a moment. Pardon the interruption. I think I should object, however. He is stating there are letters, so the letters themselves are the best evidence.

The Court: Do you have the letters?

Mr. Marcus: I do not recall, your Honor, any particular letter which relates to the doctor being reinstated.

A. I could state it in different terms. During my correspondence with the Medical Society over these matters, I received a reply stating that if I wished to have any consideration given to the matter that I should apply for membership, reinstatement in the Medical Society. That was their answer to me, that they meant that to be an invitation to apply again.

Q. What did you do? A. I did not apply for membership or submit my name for membership.

Q. Was that during this period when you were attempting to have—A. That was.

Q. —the Society and the Association get together? A. Yes.

91 Q. Since your resignation, have you attended any medical meetings of the Society? A. Not of the Medical Society, no.

Q. Have you found your not being a member of the Society injurious to you in any other way?

Mr. Jaureguy: I object to the word "other." He has not said he found it injurious. He said he didn't attend any meetings.

The Court: Have you found it injurious?

A. I would say from the beginning of this thing until the present time it has been a very bitter period of my life. I have suffered great humiliation; my family has—I have been—my organization, the organization which I head, is embarrassed, harassed, and the whole episode has been one of great grief to me.

Q. Going back to your statement as to being invited to be reinstated, was it ever your understanding you could be reinstated without conforming to what the Society considered to be compliance with its medical ethics?

Mr. Jaureguy: I object to that on the ground it is asking for a conclusion of the witness.

The Court: Objection sustained.

Mr. Marcus: Your Honor, that statement is made in one of the documents that has already been introduced or put into evidence, and I am asking this question—

92 Mr. Jaureguy: All the more reason why it is objectionable as calling for a conclusion of the witness.

The Court: Objection sustained.

93 Mr. Marcus:

Q. Dr. Moore, did you receive this invitation to reinstatement in connection with your attempts to have the Association conform?

Mr. Jaureguy: I object to that.

The Court: He answered that "yes" a moment ago.

Mr. Marcus:

Q. Doctor, to your knowledge have doctors in Oregon refused to cooperate with the Association for not taking its tickets? A. Very much so.

Q. Since 1936 has the Association received letters from doctors stating they would not accept the Association's tickets?

Mr. Jaureguy: I object to that as not the best evidence.
The Court: You may answer.
The Witness: Can I answer it?
The Court: Answer it.

A. Yes.

Mr. Marcus:

Q. And have similar letters written to members of the Association been turned over to the Association?

Mr. Jaureguy: Same objection.

A. Many of them.

Mr. Marcus:

Q. Have such letters been the subject of discussion among officers and members of the staff of the Hospital Association?

94 Mr. Jaureguy: Object to that as incompetent, irrelevant and immaterial. I beg your pardon for interrupting you, but the Doctor answers the questions pretty quickly, and I want to get my objection in. It is incompetent, irrelevant and immaterial.
The Court: You may answer.
The Witness: May I hear the question?

Mr. Marcus:

Q. Have such letters been the subject of discussion among the officers— A. These matters kept constantly coming before the Board of Directors, and were discussed quite more frequently between my general manager and myself.
Q. In your opinion has the ability of the Association to compete with organizations such as the Oregon Physicians Service been impaired by the refusal of doctors to cooperate with the Association?

Mr. Jaureguy: I object to that as a conclusion of the witness; incompetent, irrelevant and immaterial.
The Court: He may answer.
The Witness: I may answer?
The Court: Yes.

A. It has been a very difficult ordeal for my business office

to keep pace with the competition that has been offered by the means that the doctors' organization has put forward against this, and it was only with extreme efforts we have been able to keep our head above water. We have been handicapped very greatly.

95 Mr. Marcus: That is all, Doctor. Your witness.

Cross-Examination:

By Mr. Jaureguy:

Q. Doctor, in the early 30's at least, the plan by which the Industrial Hospital Association was organized was to have certain doctors that they sent the members to; that is correct, isn't it? A. Never was there a positive method. At the beginning we tried to handle as much work as our doctors could handle, and many cases were referred to other doctors, and many cases were handled by the local doctors just in order to give service. It was never entirely confined just to ourselves.

Q. By "ourselves" you mean whom? A. Dr. Pilkington, Dr. VanDusen, and myself.

Q. And then you have in each locality—I am talking now about the early history of your organization. A. That is what I am referring to.

Q. —you have in each locality one or two doctors that the employers were told— A. If we had a company that needed local service, we often had procured a doctor and stationed a doctor at localities where they needed a doctor, and then he would do all the local work, as much as he could, and the balance, or the important work, was

96 was referred either to Astoria or was referred up to Portland.

Q. That is, a case that indicated that it was going to require rather prolonged treatment, you would send them to a doctor in Astoria or Portland? A. A case of importance from a medical or surgical point of view, or a case that needed more medical attention than the local man thought he might be able to furnish, he then referred him either to Astoria or Portland.

Q. Is your method of operation now, or is your method of handling your business different from that now? A. Our method of handling prepaid work started off very much in the early days as most contract doctors would have handled work. And then it has gone through an evolutionary period of change. The contract itself and the

service and everything has gone through an evolutionary change, always to the betterment of the service, over a period of these years. And it is still going through, that same evolutionary change, trying to better the service.

Q. What is the important difference between your method of operating now and your method of operating formerly that you have described? A. Well, since we got in bad with the Medical Society, we found it essentially necessary, if we were going to exist, to broaden it out to a point where we gave a complete, free choice of
97 a physician or surgeon, and we let every man go to the doctor of his choice.

Q. Now, don't you think that that change was largely brought about by the existence of the employees after they organized as unions wanting to have the doctor of their choice? A. That is difficult to answer, just why that all came about. It came about, as I say, through an evolutionary change-over for the betterment of service as we went along. There have been hundreds and hundreds of changes in the contracts. Contracts have been changed many times, and method of procedure has been changed. But it has been an evolutionary process of change as it went along over the period of some 23 years up to the present time.

Q. But in so far as the members having a choice of physicians, originally you negotiated just with an employer for the purpose of drawing a contract? A. In those days the employer was primarily the main man that we negotiate with, until the labor unions became a little more interested in their affairs, and then it became a cooperative thing between both the union and the employer.

Q. And didn't the members of the union generally insist, or at least prefer, that they have a free choice of physicians? A. I can't say that I ever remember that they ever forced that upon us, no.

98 Q. I don't mean to say they forced it upon you, but they expressed the desire? A. We have had many discussions with members of the union as to service, but just in what particulars I can't answer that question.

Q. Your present system of giving free choice of physicians you agree that it is in the public interest; that it is desirable? A. We think that is in the public interest, yes.

Q. Now, under your present system of free choice of physicians if you have a member who gets ill, for instance, and he goes to a doctor of his choice, and the doctor renders treatment, now, how does the doctor fit into the picture so

as to cooperate with you? A. Well, many doctors render service for us, take care of our patients, give us full knowledge of what the case amounts to, let us know what their charges are—are quite cooperative in all respects. Even when the case is over they will itemize their bills and send them to us, and we will send them a check.

Q. You say many doctors do that? A. Yes.

Q. Has your office had any survey or investigation to determine how many do that? A. I think that that—I think my office could probably give you a percentage
99 estimate of about how many men will accept our checks and cooperate with us and how many won't.

Q. You have had a survey in the spring of '48 on that, haven't you? A. Well, I couldn't answer that question. My office manager could.

Q. Didn't that survey show that over twelve hundred—A. I can't answer that question.

Mr. Marcus: Just a moment, please. Your Honor, I object to this line of questioning. As we stated before, it is our understanding of the Sherman Act that it is immaterial whether some one of a large number of doctors cooperated with these associations, as long as there were a number who did not cooperate because of the activities of the defendants.

The Court: Overruled. I want to ask a question. Do you deal other than with industries now? A. Oh, yes.

The Court: That has not been developed in any of the examination so far. A. Yes.

Mr. Jaureguy:

Q. You say you don't remember whether that was the result of the survey? A. No. The figures of anything of that sort, the percentages, I would have no knowledge of it. I have seen them, but I can't
100 remember them. But I know that my manager probably would be able to give offhand a reasonable answer to that question.

The Court: Who is your manager now? A. Mr. Brunkow.

The Court: Was he your assistant before Mr. Kirk died?

A. Yes, he was.

Mr. Jaureguy:

Q. Now, what your contract really amounts to now is an indemnity contract; that is correct, isn't it?

They go to the doctor of their choice and you indemnify them in accordance with your schedule of fees? A. Yes, very largely. A man is sick, and the contract states that we allow a certain fee for certain services, and he will be remunerated on that fee.

Q. He will be remunerated not in excess of that fee. I take it if a doctor charges him $20 for something, where your schedule allows 25, you will pay the 20? A. I don't believe that ever happens.

Q. No. A. The doctor will always charge the full limit of the fee.

Q. But if a doctor charges $30 you will indemnify to the extent of your schedule? A. By our contract we can pay the man the stipulated fee.

Q. Yes, that is right. And if a doctor gives to a patient a bill indicating what the services are for and the
101 patient sends the bill to you, you will reimburse the patient, will you not? A. We have the bill handed to us?

Q. Yes. A. We would want to know what the items were.

Q. I say, the bill indicates what it was all about. A. If the bill were itemized, and my office went over it and found out that this man's coverage was all perfect, there were no exemptions, no reason why it should not be paid, and established the fact that he was entitled to service, then the office would pay him the full amount, or what he was entitled to.

Q. And if the bill is for more than he is entitled to, you will pay him for what he is entitled to? A. If the bill were more than what our contract called for, we would have the right to say, "Our contract calls for $300, but no more than that."

Q. That is right. A. Yes, no more than that.

Q. You would send the amount of the bill up to the amount of your schedule? A. Yes.

The Court: Whom do you pay it to, the doctor or the individual? A. We always have tried to cooperate with the profession and pay the doctor, but we have been
102 unable to do so, and in many, many cases, when we can't, we pay the patient. We pay the patient.

The Court: Do you make your check payable to him?

A. Make the check payable to the patient if the doctor will not accept our check.